

No. 12027

United States
Court of Appeals
for the Ninth Circuit

ESTATE OF FRANK K. SULLIVAN, deceased,
by FLOYD K. SULLIVAN, Executor,
Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Upon Petition to Review a Decision of The Tax Court
of the United States

FILED

OCT 5 - 1948

PAUL P. O'BRIEN

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES:

For Petitioner:

PHILIP C. JONES, Esq.,
ALBERT MOSHER, Esq.

For Respondent:

DOUGLAS L. BARNES, Esq.

Docket No. 12476

ESTATE OF FRANK K. SULLIVAN, Deceased,
By FLOYD K. SULLIVAN, Executor,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES

1946

Nov. 12—Petition received and filed. Taxpayer notified. Fee paid.

Nov. 12—Request for hearing at Los Angeles filed by taxpayer.

Nov. 13—Copy of petition served on General Counsel.

Dec. 23—Answer filed by General Counsel.

Dec. 31—Copy of answer served on taxpayer—Los Angeles, Calif.

1947

Sep. 30—Hearing set Dec. 1, 1947 at Los Angeles, Calif.

Dec. 2 & 3—Hearing had before Judge Disney on merits. Stipulation as to facts filed. Briefs due Jan. 15, 1948—replies Feb. 10, 1948.

Dec. 30—Transcript of hearing of Dec. 2, 1947 filed.

Dec. 30—Transcript of hearing of Dec. 3, 1947 filed.

1948

Jan. 13—Brief filed by taxpayer.

Jan. 14—Motion for extension to Jan. 30, 1948 to file original briefs and Feb. 23, 1948 to file reply brief filed by General Counsel. 1/15/48 granted.

Jan. 30—Brief filed by General Counsel.

Jan. 30—Petitioner's brief served on General Counsel.

Feb. 24—Reply brief filed by General Counsel.

Feb. 24—Reply brief filed by taxpayer — copy served.

May 27—Findings of fact and opinion rendered. Disney J. Decision will be entered for the respondent. Copy served 5/28/48.

May 27—Decision entered, R. L. Disney J. Div. 4.

Aug. 2—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, filed by taxpayer.

Aug. 2—Proof of service filed.

Aug. 2—Praecipe filed with proof of service thereon. [1 *]

*Page numbering appearing at foot of page of original certified Transcript of Record.

The Tax Court of the United States

Docket No. 12476

ESTATE OF FRANK K. SULLIVAN, deceased,
by FLOYD K. SULLIVAN, Executor,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency (Bureau Symbols LA:ET:90D:NAB) dated August 15, 1946, and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual residing at 327 Burlingame Avenue, Los Angeles 24, California; that he was formerly the executor of the Estate of Frank K. Sullivan, deceased, and is the person to whom all [2] communications in respect to said estate have been directed by the Treasury Department. Said Frank K. Sullivan died on January 9, 1944. Probate of said estate of said decedent has been concluded, petitioner herein was discharged as such executor on June 4, 1945, and all of said estate has been distributed by decree of the Superior Court of the State of California in and for the County of Los Angeles. The estate tax return (Form 706) for said estate was filed with the Collector for the Sixth District of California. The

applicable valuation date was the date of death of the decedent.

2. The Notice of Deficiency (a copy of which is attached hereto and marked Exhibit A) was mailed to the petitioner on August 15, 1946.

3. The taxes in controversy are the estate taxes of said estate and in particular, the Commissioner's determination of said taxes which, according to said Notice of Deficiency, discloses a deficiency of \$18,963.17, without application of the credit for state inheritance taxes in the amount of \$460.75.

4. The determination of taxes set forth in said Notice of Deficiency is based upon the following errors and each of them: [3]

(a) The Commissioner of Internal Revenue erred in including in the value of the gross estate of decedent, and in failing to except and exclude from such value, the value, amounting to \$25,013.80 at the time of the death of decedent, of the interests of Hattie B. Sullivan, surviving spouse and widow of decedent, in certain United States Savings Bonds, Series G, and interest thereon, all owned and held at said time by decedent and Hattie B. Sullivan as tenants in common and not as joint tenants, in equal undivided shares and interests, such shares and interests of Hattie B. Sullivan then being her sole and separate property.

(b) The Commissioner of Internal Revenue erred in including in the value of the gross estate of decedent the value, amounting to \$37,748.75 at the time of the death of decedent, of the interests of Hattie B. Sullivan in certain real property and

in personal property exclusive of the bonds and interest thereon referred to in the foregoing paragraph (a), all of which real and personal property was owned and held at said time by decedent and Hattie B. Sullivan as tenants in common and not as joint tenants, in equal undivided shares and interests, such shares and interests of Hattie B. Sullivan then being her sole and separate property.

(c) The Commissioner of Internal Revenue erred in including in the value of the gross estate of decedent the value, amounting to \$33,526.54 at the time of the death of decedent, of certain personal property, to wit, securities, acquired by gift during the lifetime of decedent, by Floyd K. Sullivan, the son of decedent and Hattie B. Sullivan, and not owned or held by decedent at the time of his death and not includable in said gross estate under any of the subdivisions or provisions of Section 811 of the Internal Revenue Code; said gift having been made by decedent and Hattie B. Sullivan (now living), who, at the time of said gift, owned and held said property as joint tenants, in equal undivided shares and interests constituting separate property of the respective donors.

(d) The Commissioner of Internal Revenue erred in finding and determining that the property and property interests hereinabove referred to in paragraphs (a), (b) and (c) of these assignments of error, aggregating in value \$96,289.09 at the time of the death of decedent, were interests of which decedent, during his lifetime, to wit, on November 19, 1943, and November 24, 1943, made transfers in

contemplation of his death within the meaning of Section 811 (c) of the Internal Revenue Code.

(e) The Commissioner of Internal Revenue erred in finding and determining that the interests of decedent and Hattie B. Sullivan, his wife, in the bonds hereinabove referred to in paragraph (a) of these assignments of error, and interest thereon, aggregating in value \$50,027.60 as of the time of the death of decedent, were, at said time, interests in property held as joint tenants by decedent and Hattie B. Sullivan, within the meaning of Section 811 (e) of the Internal Revenue Code, thereby subjecting to estate taxes under said section the interests of Hattie B. Sullivan, of the value of \$25,013.80, referred to in said paragraph (a).

5. The facts upon which petitioner relies as a basis of this proceeding are as follows:

(a) Decedent and Hattie B. Sullivan were married April 6, 1892, in Minneapolis, Minnesota, and remained husband and wife until decedent's death on January 9, 1944.

(b) Decedent was and had been for a long period of time prior to moving to California, engaged in the retail coal business in Minneapolis. Said business was solely owned by him and conducted under the trade name of Sullivan Coal Company.

(c) In 1918 decedent sold his entire business to the C. Reiss Coal Company and thereafter for all intents and purposes retired from active business except for occasionally assisting said buyer from time to time in setting up and organizing its Min-

neapolis office of which decedent's business formed the nucleus.

(d) Over a long period of time prior to decedent's selling out his business he and his surviving spouse, Hattie B. Sullivan, had consistently spent at least three months during the winter in Los Angeles. The decedent and his surviving spouse moved to California and made it their permanent home and domicile in 1922. [7]

(e) Decedent received for the sale of his business the sum of approximately \$100,000 which he thereafter proceeded to invest in apartment houses and income property and in mortgages and trust deeds with various firms located in Los Angeles both before and after making California the permanent domicile of him and his wife.

(f) All property acquired by decedent and his wife after said business was sold, and both prior and subsequent to the time they established their domicile in California, as aforesaid, was originally acquired and held by them as joint tenants with right of survivorship, and said property was thereafter owned and held by decedent and his wife as such joint tenants until disposed of or partitioned, divided and commuted into property owned and held by them as tenants in common, as hereinafter stated.

(g) The income from all properties so held by decedent and his wife was likewise held in joint-tenancy bank accounts in the names of decedent and his wife; and one-half of all said income from said joint tenancy property was included in the indivi-

dual tax returns (both federal and state) of said decedent and his wife filed each year in [8] which a tax was due thereunder and the taxes paid from the joint bank accounts of decedent and his wife.

(h) On or about the 19th day of November, 1943, decedent and his wife (who is now living) made gifts of certain securities then owned by them as joint tenants, to Floyd K. Sullivan, their son, and thereupon said Floyd K. Sullivan became the sole and absolute owner of said securities. The fair market value of said securities as of the date of death of said decedent was \$33,526.54, one-half of which represented the value of a gift from decedent and the remaining one-half of which represented the value of a gift from Hattie B. Sullivan. The Commissioner of Internal Revenue has determined that the entire value of said gifts, to wit, \$33,526.54, was and is includable in the value of the gross estate of decedent under the provisions of Section 811 (c) of the Internal Revenue Code.

(i) On or about the 24th day of November, 1943, decedent and his wife, Hattie B. Sullivan, made and entered into a certain agreement in writing dated the 24th day of November, 1943, [9] (a copy of which is attached hereto, marked Exhibit B and made a part hereof) wherein and whereby they partitioned, divided and commuted all of the property, both real and personal, then owned and held by them as joint tenants, being all of the property then belonging to or held by them, or either of them, into property owned and held by them as tenants in common, in equal undivided shares and interests,

said shares and interests constituting separate property of the respective parties. Concurrently with the execution of said agreement, and pursuant to the advice of Title Insurance and Trust Company of Los Angeles, California, as to the best method of establishing the results of said agreement of record insofar as it related to real property, the parties to said agreement made, executed and delivered to decedent grant deeds covering the several parcels of real property affected by said agreement, and said parties likewise at said time made, executed and delivered to decedent written assignments of deeds of trust affected by said agreement; and thereafter, and as a part of the same transaction above described, decedent made, executed and delivered to Hattie B. [10] Sullivan grant deeds covering an undivided one-half interest in and to each of said parcels of real property, and at the same time decedent made, executed and delivered to Hattie B. Sullivan written assignments covering an undivided one-half interest in and to each of said deeds of trust; and that said deeds and assignments were thereafter duly recorded in the office of the County Recorder of Los Angeles County, California.

(j) At the times referred to in the foregoing paragraph (i) the life expectancy of Hattie B. Sullivan exceeded that of said decedent. The consideration for the release and extinguishment and for the transfer, if any, of the rights and interests of decedent under and pursuant to said agreement and the deeds and assignments executed, as aforesaid,

was the release and extinguishment and the transfer, if any, of identical rights and interests of Hattie B. Sullivan, and said rights and interests of Hattie B. Sullivan were of no lesser value, but, on the contrary, to the extent of the value of the greater life expectancy of Hattie B. Sullivan, as aforesaid, were of greater value than the rights and interests of decedent so released, extinguished or transferred; [11] and the partition, division and commutation of the property of decedent and Hattie B. Sullivan, as aforesaid, was a bona fide sale from each of them to the other for an adequate and full consideration in money's worth.

(k) Said agreement covered and related to certain United States Savings Bonds, Series G, and interest thereon, of the fair market value of \$50,027.60 as of the date of death of decedent, and to other property, real and personal, of the fair market value of \$75,497.50 as of said date. The Commissioner of Internal Revenue has determined that the entire value of said bonds and interest thereon, and of such other property, aggregating \$125,525.10, was and is includible in the value of the gross estate of decedent, said Commissioner having found that the value of the undivided one-half interest of Hattie B. Sullivan in said bonds and interest thereon and in such other property, to wit, \$62,762.55, was and is so includible in said gross estate under the provisions of Section 811 (c) of the Internal Revenue Code, and that the full value of said bonds and interest thereon, to wit, \$50,027.60 including the interest of Hattie [12] B. Sul-

livan therein, of the value of \$25,013.80, was and is also includable in said gross estate under the provisions of Section 811 (e) of said Code.

1. All of the property owned or held by decedent and Hattie B. Sullivan, as joint tenants, as hereinbefore alleged, was owned and held by them in equal undivided shares and interests, and such shares and interests of said joint tenants were owned and held by them, respectively, as his or her separate property and not as community property; and all of the property owned or held by decedent and Hattie B. Sullivan, as tenants in common, as hereinbefore alleged, was owned and held by them in equal undivided shares and interests, and such shares and interests of said tenants in common were owned and held by them, respectively, as his or her separate property and not as community property.

(m) An undivided one-half interest in the property given to Floyd K. Sullivan, as hereinbefore alleged, was given to him absolutely and free of the claims, rights, titles and interests of all other persons, by Hattie B. Sullivan, his mother, who, [13] at the time of said gift was the sole and absolute owner of said undivided one-half interest. Said gift took effect during the lifetime of the decedent, but neither the gift of said interest, nor the transfer of any property constituting the subject of said gift, was made by the decedent, and the decedent was not the owner or holder of any of said property or of any right, title or interest therein or thereto, or in or to any income therefrom, at the time of his death. The value of said interest,

to wit, \$16,763.27 was not, therefore, includable in the value of the gross estate of the decedent, and the inclusion thereof in said estate is one of the errors of which petitioner complains.

(n) The remaining one-half interest in the property given to Floyd K. Sullivan, as hereinbefore alleged, was given to him by the decedent prior to decedent's death, and said gift took effect in possession and enjoyment during the lifetime of the decedent. The decedent did not, at any time after said gift became effective, have or retain the possession or enjoyment of any of said property, or the right to any income therefrom, or the right, either alone or in conjunction with any person, to [14] designate the persons who should possess or enjoy said property or any income therefrom, and neither said gift nor any transfer of said property, was made in contemplation of the death of the decedent. The value of said interest and property, to wit, \$16,763.27, was not, therefore, includable in the value of the gross estate of the decedent, and the inclusion thereof in said estate is one of the errors of which petitioner complains.

(o) None of the property or property interests owned or held by Hattie B. Sullivan subsequent to or resulting from said agreement dated November 24th, 1943, or any of the aforesaid deeds or written assignments, was received or acquired by her as a gift or transfer in contemplation of or intended to take effect in possession or enjoyment at or after the death of the decedent, and the decedent did not, at any time after said agreement and said deeds and assignments became effective, or at the time of

his death, have or retain the possession or enjoyment of any of said property or interests, or the right to any income therefrom, or the right, either alone or in conjunction with any person, to designate the persons who should possess or enjoy said property or interests or any income therefrom; and none of [15] said property or property interests was held or owned, at the time of the death of the decedent, by Hattie B. Sullivan and the decedent or any other person as joint tenants, or as a part of any joint-tenancy property, or as community property. The value of said property and interests of Hattie B. Sullivan, to wit, \$62,762.55, was not, therefore, includible in the value of the gross estate of the decedent, and the inclusion thereof in said estate is one of the errors of which petitioner complains.

(p) At the time of the making of the gift made by the decedent to his son, Floyd K. Sullivan, as aforesaid, and at the time the aforesaid agreement, deeds and assignments were executed, the decedent was between seventy-seven and seventy-eight years of age, was in good health and was not conscious or aware of any infirmity in his physical condition or that his death was imminent or impending. His death was in fact caused by and resulted from surgery performed upon the decedent on the 3rd day of January, 1944, and not from normal or natural causes; and the decedent did not at the time said gift was made or at the time said agreement or any of said deeds or assignments were executed foresee, [16] contemplate or intend that any surgical operation was to be performed upon him.

Wherefore, your petitioner prays that this Court may hear this proceeding and that it may find:

1. That no deficiency exists in the estate tax due by reason of the death of Frank K. Sullivan;
2. That no part of the value, to wit, \$25,013.80, of the undivided one-half interest of Hattie B. Sullivan in the United States Savings Bonds, Series G, and interest thereon herein referred to, was or is includible in the value of the decedent's gross estate under the provisions of Section 811 (c) or Section 811 (e) of the Internal Revenue Code or otherwise;
3. That no part of the value, to wit, \$37,748.75, of the undivided one-half interest of Hattie B. Sullivan in all property, real and personal, owned by her and decedent as tenants in common, exclusive of said bonds and interest thereon, was or is includible in the value of decedent's gross estate under the provisions of Section 811 (c) of the Internal Revenue Code;
4. That no part of the value, to wit, \$33,526.54, of the securities given to and acquired by said Floyd K. Sullivan as hereinabove stated was or is includible in the value of decedent's gross estate under the provisions of Section 811 (c) of the Internal Revenue Code, and [17]
5. For such other and further relief as the nature of the case may warrant.

/s/ PHILIP C. JONES,
/s/ ALBERT MOSHER,

Attorneys for Petitioner.

(Duly Verified.) [18]

EXHIBIT A

Treasury Department
Internal Revenue Service
417 South Hill Street
Los Angeles 13, California

Office of August 15, 1946
Internal Revenue Agent in Charge
Los Angeles Division
LA:ET:90D:NAB

Estate of Frank K. Sullivan, deceased
Mr. Floyd K. Sullivan, Executor
327 Burlingame
West Los Angeles, California

Dear Mr. Sullivan:

You are advised that the determination of the estate tax liability of the above-named estate discloses a deficiency of \$18,963.17, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency or deficiencies mentioned.

Within 90 days (not counting Saturday or Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may file a petition with The Tax Court of the United States, at its principal address, Washington, D. C., for a redetermination of the deficiency or deficiencies.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward

it to the Internal Revenue Agent in Charge, Los Angeles, California, for the attention of LA: Conf. The signing and filing of this form will expedite the closing of your return (s) by permitting an early assessment of the deficiency or deficiencies, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

JOSEPH D. NUNAN, Jr.,
Commissioner,

By /s/ GEORGE D. MARTIN,
Internal Revenue Agent in Charge.

Enclosures: State, Form of Waiver.

Statement

	Liability	Assessed	Deficiency
Estate tax	\$18,963.17	\$	\$18,963.17

In making this determination of the federal estate tax liability of the above-named estate careful consideration has been given to the report of examination dated June 21, 1945, to the protest dated August 13, 1945, and to the statements made at the hearings on September 20, 1945, and March 25, 1946.

A copy of this letter and statement has been mailed to your representative, Mr. Philip C. Jones, 417 South Hill Street, Los Angeles 13, California, in accordance with the authority contained in the power of attorney executed by you.

Adjustments to Net Estate

Net estate for basic tax as disclosed by the return.....(\$42,287.67)
 Additions to value of net estate and decreases in de-

ductions:

Transfers during decedent's life.....	96,289.09
<hr/>	

Reductions in value of net estate and increases in de-
 ductions:

Stocks and bonds	\$140.20
Miscellaneous administration expenses..	64.20
<hr/>	

Net estate for basic tax as adjusted.....\$53,797.02
 Net estate for additional tax as adjusted.....\$93,797.02

Explanation of Adjustments

	Returned	Determined
Transfers during decedent's life....\$	\$96,289.09

Transfers of property on November 19, 1943, and November 24, 1943, of a total value of \$96,289.09 are included in the gross estate as transfers in contemplation of death under the provisions of Section 811 (c) of the Internal Revenue Code. Of the above transfers \$25,013.80 represents one-half of the value of \$50,000.00 United States Savings bonds, Series G, with interest, held in the name of the decedent and his wife as co-owners at his death, which are included in the gross estate in full under the provisions of section 811 (e) of the Internal Revenue Code.

Stocks and bonds:

Item 1	\$2,319.00	\$2,363.00
Item 5	1,490.00	1,292.00
Item 6 (accrued interest).....	.....	13.80
<hr/>		
	\$3,809.00	\$3,668.80
	3,668.80	
<hr/>		

Difference	\$ 140.20	
Miscellaneous administration expenses.....	\$ 118.75	\$ 182.95
Difference	\$ 64.20	

Computation of Estate Tax

	Returned	Determined
Gross estate for basic tax.....	\$ 63,440.55	\$159,589.44
Deductions	105,728.22	105,792.42
Net estate for basic tax.....	(\$ 42,287.67)	\$ 53,797.02
Net estate for additional tax (\$2,287.67)	\$93,797.02	
Gross basic tax.....	\$ 575.94	
Credit for estate and inheritance tax.....	.....
Net basic tax.....	.....	\$ 575.94
Total gross taxes (basic and additional)	\$18,963.17	
Gross basic tax.....	575.94	
Net additional tax.....	.....	18,387.23
Total net basic and additional taxes.....	.....	\$18,963.17
Total tax payable.....	.....	\$18,963.17
Estate tax assessed.....	.....
Deficiency .....	.....	\$18,963.17

Upon receipt of a waiver, or upon the expiration of 90 days from the date of this letter, if a petition is not filed with The Tax Court of the United States, \$18,502.42 of the deficiency will be assessed.

As the balance of the deficiency may be eliminated by credit for State estate, inheritance, legacy, or succession taxes, opportunity will be accorded for the submission of the evidence required by Section 81.9 of Regulations 105. If after a reasonable time the evidence is not filed, the balance of the deficiency will be assessed. Please advise when the credit evidence may be expected. [23]

EXHIBIT B

CONTRACT

This agreement, made and entered into this 24th day of November, 1943, by and between Frank K. Sullivan and Hattie B. Sullivan, husband and wife, both of Los Angeles County, California,

Witnesseth:

Whereas, the parties hereto have, during their married life with each other, accumulated certain real and personal properties; and,

Whereas, substantially all of said properties are now owned by them as joint tenants; and

Whereas, the parties desire to terminate all of such joint tenancies and to divide all of said real and personal property between them, to the end that each will own approximately one-half thereof as his or her separate property, free and clear of all rights and claims of the other party.

Now, therefore, it is agreed as follows:

First: That from and after this date all of the real and personal property owned by the parties hereto, whether presently held in joint tenancy or presently owned by either of the parties [24] hereto in his or her own name, shall be owned by each of the parties as follows:

An undivided one-half interest therein shall be the separate property of Frank K. Sullivan, and Hattie B. Sullivan hereby assigns and transfers to Frank K. Sullivan all of her right, title and interest in and to an undivided one-half interest in the same.

An undivided one-half interest therein shall be the separate property of Hattie B. Sullivan, and Frank K. Sullivan hereby assigns and transfers to Hattie B. Sullivan all of his right, title and interest in and to an undivided one-half interest in the same.

Second: It is the intent and purpose of the parties that this agreement cover all of their property and estate, wherever the same may be situated and whatever may be its kind or character, and more particularly, though not inclusively, the parties refer to the following:

REAL PROPERTY

Four (4) parcels of real property, all located in the County of Los Angeles and commonly known as

Parcel 1. 418 South Peck Drive, Beverly Hills, California, title to which stands in joint tenancy between the parties.

Parcel 2. 466 and 468 South Roxbury Drive, Beverly Hills, California, title to which stands in joint tenancy between the parties.

Parcel 3. 1035 and 1037 South Citrus Avenue, Los Angeles, California, title to which stands in joint tenancy between the parties, and [25]

Parcel 4. 7521 Maie Avenue, Bell, California, title to which stands in the name of Frank K. Sullivan alone.

It is further agreed that appropriate deeds or other instruments of transfer, aside from this agreement, will be executed by either or both of the par-

ties so as to vest an undivided one-half interest in each of said parcels of real property in each of the parties hereto as his or her property.

NOTES SECURED BY TRUST DEED

Five (5) promissory notes secured by trust deeds, as follows:

One for the principal sum of \$4,500.00, secured by a trust deed covering real property commonly known as 1000 Havenhurst, Los Angeles, California.

One for the principal sum of \$5,000.00, secured by a trust deed covering real property commonly known as 911 and 913 North Spaulding Avenue, Los Angeles, California.

One for the principal sum of \$3,400.00, secured by a trust deed covering real property commonly known as 1061-3 Crescent Heights Boulevard, Los Angeles, California, and

One for the principal sum of \$7,000.00, secured by a trust deed covering real property commonly known as 111 North Palm Drive, Beverly Hills, California.

Certain payments have heretofore been made on account of principal on each of said promissory notes so that the total unpaid principal sum thereof, as of this date, is approximately \$16,901.99, and appropriate written assignment will be executed by either or both of the parties hereto so that the actual [26] record title to each of said promissory notes and trust deeds will be vested, an undivided one-half interest in each of the parties hereto as his or her separate property.

United States Savings Bonds, Series "G", bearing 2½% interest and issued July 1, 1943, bearing the following Serial Numbers and in the following amounts:

Amount	Serial Number
\$ 5,000.00	236966
\$ 5,000.00	236967
\$10,000.00	314036
\$10,000.00	314037
\$10,000.00	314038
\$10,000.00	314039

Each of said United States Savings Bonds stands in the name of Frank K. Sullivan or Hattie B. Sullivan and it is not possible nor practical to change the registration of said bonds, but by the execution of this instrument, Frank K. Sullivan hereby transfers and sets over to Hattie B. Sullivan, as her separate property, an undivided one-half interest in each of said bonds; and Hattie B. Sullivan, by the execution of this instrument, hereby transfers and sets over to Frank K. Sullivan, as his separate property, an undivided one-half interest in each of said bonds; and by the execution of this instrument, the parties have, for all purposes, terminated their title in joint tenancy.

Chicago City Railway First Mortgage 5% Bonds, due February 1, 1927, having a total Par Value of \$4,000.00, [27] which bonds stand in the name of Frank K. Sullivan and Hattie B. Sullivan, as joint tenants. The parties hereto will, as soon as practical, change the registration of said bonds so that

bonds of a face value of \$2,000.00 shall be registered in the name of Frank K. Sullivan and bonds of a like amount in face value shall be registered in the name of Hattie B. Sullivan. However, by the execution of this instrument, Frank K. Sullivan does hereby transfer and set over to Hattie B. Sullivan an undivided one-half interest in all of said bonds as her separate property, and Hattie B. Sullivan does hereby transfer and set over to Frank K. Sullivan an undivided one-half interest in all of said bonds as his separate property; and by the execution of this instrument, the parties have, for all purposes, terminated their title in joint tenancy.

CORPORATE STOCKS

Item 1. 200 Shares Union Bond Fund "A", being a classification of the capital stock of Union Trusteed Funds Inc., (a Delaware Corporation) represented by Certificate UBA184, for 100 Shares and Certificate UBA185, for 100 Shares.

Item 2. 896½ Shares of the Capital Stock of Bonnie Lee Apartment Corporation, (a California corporation) represented by Certificates Nos. 250, 251, 252, 253, 254 and 294.

Item 3. St. Francis Hotel and Apartments, a corporation, represented by Certificate No. 178, for 1407 Shares. [28]

Each of the foregoing corporate stocks stands in the name of Frank K. Sullivan or Hattie B. Sullivan, or Frank K. Sullivan and Hattie B. Sullivan, as joint tenants. As soon as practical, the said shares of stock will be divided between the parties

and reissued in their respective names. By the execution of this instrument, Frank K. Sullivan hereby transfers and sets over to Hattie B. Sullivan, as her separate property, an undivided one-half interest in each of said stock and Hattie B. Sullivan hereby transfers and sets over to Frank K. Sullivan, as his separate property, an undivided one-half interest in each of said shares of stock; and by the execution of this instrument, the parties have, for all purposes, terminated their title in joint tenancy.

The consideration for this agreement is the mutual covenants and promises herein contained and each of the parties hereby agree to execute any and all instruments of transfer or conveyance which may be necessary, convenient or desirable to perfect the clear record title of each in and to his or her share of each and every item of property described or referred to herein or which belongs to the parties hereto and may not be described or specifically referred to herein.

Witness our signatures the day and year first above written.

/s/ FRANK K. SULLIVAN.

/s/ HATTIE B. SULLIVAN.

Witnesses:

.....

.....

[Endorsed]: Filed Nov. 12, 1946. [29]

State of California,
County of Los Angeles—ss.

On this 24th day of November, A.D. 1943, before me, Viola Coleman, a Notary Public in and for said County and State, personally appeared Frank K. Sullivan and Hattie B. Sullivan, known to me, (or proved to me on the oath of), to be the persons whose names are subscribed to the within Instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal) VIOLA COLEMAN,

Notary Public in and for said County and State.

My Commission expires October 15, 1947.

[Title of Tax Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

(1), (2) and (3). Admits the allegations contained in paragraphs (1), (2) and (3) of the petition.

(4)(a) to (e), inclusive. Denies the allegations

of error contained in subparagraphs (a) to (e), inclusive, of paragraph (4) of the petition.

(5)(a) to (c), inclusive. Admits the allegations contained in subparagraphs (a) to (c), inclusive, of paragraph (5) of the petition.

(d) Denies the allegations contained in subparagraph (d) of paragraph (5) of the petition.

(e) Admits the matter set forth in subparagraph (e) of [30] paragraph 5 of the petition except it is denied that the sale of the decedent's coal business was made for the sum of approximately \$100,000.

(f) and (g). Denies the allegations contained in subparagraphs (f) and (g) of paragraph (5) of the petition.

(h). To the extent that the allegations contained in subparagraph (k) of paragraph (5) of the petition are consistent with the statutory notice of deficiency they are admitted, but all other allegations contained in said subparagraph are denied.

(i) and (j). Denies the allegations contained in subparagraphs (i) and (j) of paragraph (5) of the petition.

(k). To the extent that the allegations contained in subparagraph (k) of paragraph (5) of the petition are consistent with the statutory notice of deficiency they are admitted, but all other allegations contained in said subparagraph are denied.

(l) to (p), inclusive. Denies the allegations contained in subparagraphs (l) to (p), inclusive, of paragraph (5) of the petition.

(6). Denies each and every allegation contained in the [31] petition not hereinbefore specifically admitted or denied.

Wherefore, it is prayed that the determination of the Commissioner be approved.

/s/ J. P. WENCHEL,
Chief Counsel, Bureau of
Internal Revenue.

Of Counsel:

B. H. NEBLETT,
Division Counsel.

E. C. CROUTER,
H. A. MELVILLE,
Special Attorneys, Bureau of
Internal Revenue.

[Endorsed]: Filed Dec. 23, 1946. [32]

[Title of Tax Court and Cause.]

STIPULATION OF FACTS

It is hereby stipulated and agreed by and between the parties to the above-entitled proceeding, by and through the undersigned, their respective counsel, that the facts involved in said proceeding are in part as follows:

1. Petitioner is an individual residing at 327 Burlingame Avenue, Los Angeles, California; he was formerly the executor of the Estate of Frank K. Sullivan, deceased, and is the person to whom

all communications in respect to said estate have been directed by the Treasury Department, and petitioner represents said estate in this proceeding. Said Frank K. Sullivan died on January 9, 1944. The probate of said estate has been concluded, petitioner was discharged as such executor on June 4, 1945, and all of said estate has [33] been distributed by decree of the Superior Court of the State of California in and for the County of Los Angeles. The estate tax return (Form 706) for said estate was filed with the Collector for the Sixth District of California and the applicable valuation date was the date of death of the decedent.

Pursuant to the decree of said Superior Court of the State of California in the Estate of Frank K. Sullivan, a life interest in the assets of said estate was distributed to Hattie B. Sullivan, wife of Frank K. Sullivan, and the remainder interest therein was distributed to Floyd K. Sullivan. Hattie B. Sullivan died on December 18, 1946, and all of the assets of said estate have now become and are now vested in Floyd K. Sullivan under the terms of the will of Frank K. Sullivan.

2. The Notice of Deficiency, a copy of which is attached to the petition on file in this proceeding, marked Exhibit A, was mailed to the petitioner on August 15, 1946.

3. The taxes in controversy are the estate taxes of said estate and in particular the Commissioner's determination of said taxes which, according to said Notice of Deficiency, disclosed a deficiency of \$18,-963.17, without application of the credit for state

inheritance taxes in the amount of \$460.75. The deficiency results from the [34] Commissioner's action in adding to the gross estate, as shown in the estate tax return of the decedent, property having agreed value of \$96,289.09 on January 9, 1944.

4. The total additions to the gross estate referred to in paragraph 3 above, having an agreed value on January 9, 1944, of \$96,289.09, consist of the following properties or interests in properties:

(a) $\frac{1}{2}$ interest in United States Savings Bonds, Series G, which, with accrued interest, had a value for said $\frac{1}{2}$ interest of \$25,013.80.

(b) A $\frac{1}{2}$ interest in the following described properties and interests having an aggregate value of \$35,348.75 as follows:

1. Lot 165, Tr. 3535, Beverly Hills.....	\$ 5,250.00
2. Lot 74, Tr. 3535, Beverly Hills.....	6,750.00
3. Lot 31, Nadeau Villa Tr. Bell.....	750.00
4. Lot 81, Tr. 5070, Beverly Hills.....	4,500.00
5. 200 sh. Union Trusteed Funds, Inc.....	2,363.00
6. 896 $\frac{1}{2}$ sh. Bonnie Lee Apts. Corp.....	5,379.00
7. 1,407 sh. St. Francis Hotel & Apt.....	200.00
8. \$4,000 Chicago City Ry. 1st Mtgd. Bds.....	1,292.00
9. 4,852.94 Note N. D. Roller, et ux.....	2,426.47
10. 4,367.66 Note Wm. H. Gass, et ux.....	2,183.83
11. 2,569.36 Note Ed. A. Riesenfeld.....	1,284.68
12. 1,900.00 Note Abbie C. Shanks.....	950.00
13. 2,939.54 Note A. E. Gorman, et ux.....	1,469.77
14. Furniture, fixtures and household goods.....	550.00
Total Value of Half Interest.....	\$35,348.75

(c) The face value of a check for \$2,400.00 written December 20, 1943, by Hattie B. Sullivan, wife of decedent, [35] on a joint bank account.

(d) The market value of certain securities ag-

gregating \$33,526.54 which were the subject of a gift to Floyd K. Sullivan, son of decedent, on or about November 19, 1943, as follows:

1. \$10,000.00 Gulf, Mobile and Ohio RR Co. bond.....	\$10,000.00
Accrued interest	77.78
2. 2,500 shares Harris Mfg. Co. stock.....	4,687.50
3. 125 shares Pacific-American Investors pfd. stk....	2,312.50
4. 1,150 shares Pacific-American Investors Inc.	
common stock	2,156.25
5. 40 units Southwestern Freight Lines stock.....	1,120.00
6. 100 shares Pacific Intermountain Express Co.	
pfd. stk.	1,000.00
7. 75 shs. Boston Edison Co. common stock.....	2,493.76
Accrued dividend	75.00
8. 100 shs. First Boston Corp. common stock.....	2,512.50
9. 15 shs. International Business Machines Corp.	
common stock	2,572.50
10. 10 shs. W. B. Coon Co. preferred stock.....	1,050.00
11. 50 shs. Bank of America common stock.....	2,268.75
12. 100 shs. Walt Disney Productions pfd. stock.....	1,200.00

5. The facts with respect to the properties referred to in paragraph 4 and all subparagraphs of that paragraph are as follows:

(a) At the date of death of decedent and at all times prior thereto from the date of purchase, all of the United States Savings Bonds, Series G, referred to in subparagraph 4(a) were issued and held in the joint names of "Frank K. Sullivan or Hattie B. Sullivan." One-half of the [36] market value of said bonds was included in decedent's gross estate for Federal estate tax purposes by the executor. The Commissioner added to the gross estate the remaining one-half interest in said bonds, which, together with accrued interest, had an aggregate value of \$25,013.80 referred to in subparagraph 4(a), above, and shown by the Notice of Deficiency.

All of said bonds are the Series G savings bonds referred to in the agreement between the decedent and his wife dated November 24, 1943, a copy of which is attached to the petition on file, marked Exhibit B and incorporated herein by reference.

(b) A one-half interest in the respective real and personal properties listed in subparagraph 4(b) was included by the executor in the gross estate of Frank K. Sullivan for Federal estate tax purposes. The Commissioner added to the gross estate the value of an additional one-half interest in said properties having a value for said one-half interest of \$35,348.75. Said real and personal properties are the real and personal properties (exclusive of United States Savings Bonds, Series G) referred to by specific description or otherwise in the agreement between decedent and his wife dated November 24, 1943, a copy of which is attached to the petition, marked Exhibit B and made a part hereof by reference. The record of ownership of said properties [37] prior to November 24, 1943, and the deeds and assignments effecting a change in record ownership are set forth in paragraph 14 below.

(c) The amount of \$2,400.00 referred to in subparagraph 4(c) above represents the face value of a check drawn December 20, 1943, by Hattie B. Sullivan on a bank account in the joint names of "F. K. or Hattie B. Sullivan," which was, thereafter, deposited in a separate account in the name of Mrs. Hattie B. Sullivan in another bank. No part of the face amount of said check was included

in the gross estate of the decedent by the executor and the entire face amount thereof was included in the gross estate by the Commissioner in the deficiency notice.

(d) The amount of \$33,526.54 referred to in subparagraph (d) of paragraph 4 represents the agreed value of certain securities which were the subject of a gift to Floyd K. Sullivan, decedent's son, in accordance with the instructions contained in a letter dated November 19, 1943. A copy of said letter is attached hereto marked Exhibit 1-A and made a part hereof. No part of the value of said assets was included in the gross estate of decedent by executor, and the entire value thereof was included in the gross estate by the Commissioner in the deficiency notice. The record ownership of said securities prior to November 19, 1943, and [38] the dates upon which transfers were effected thereof are disclosed in the letter dated November 26, 1947, of the First California Company, successor to Nelson Douglass & Co., attached hereto marked Exhibit 2-B and incorporated herein by this reference.

6. Had Frank K. Sullivan died immediately prior to the execution of the agreement dated November 24, 1943, and the making of the gift in accordance with the letter dated November 19, 1943, all of the properties mentioned in subparagraphs (a), (b), (c) and (d) of paragraphs 4 and 5 hereof, except those standing in the name of Frank K. Sullivan alone, would have been includable in the gross estate of decedent Frank K. Sullivan under

Section 811(e)(1) of the Internal Revenue Code. Under the same circumstances, those properties standing in the name of Frank K. Sullivan alone, mentioned in said paragraphs, would have been includable in the gross estate of decedent Frank K. Sullivan under one of the following sections of the Internal Revenue Code, to wit, 811(e)(1) or 811(a).

7. Decedent and Hattie B. Sullivan were married April 6, 1892, in Minneapolis, Minnesota, and remained husband and wife until decedent's death on January 9, 1944. Hattie B. Sullivan, the surviving spouse, died December 18, 1946.

8. At the time of decedent's death and continuously [39] for about 22 years immediately prior thereto, decedent and his wife resided and were domiciled in the State of California. For many years prior to establishing their residence and domicile in California decedent and his wife resided and were domiciled in the State of Minnesota. Decedent was, and had been for a long period of time prior to moving to California, engaged in the retail coal business in Minneapolis, Minnesota, which business was solely owned by him and conducted under the trade name of Sullivan Coal Company. In 1918 decedent sold his entire business to the C. Reiss Coal Company and thereafter for all intents and purposes retired from active business except for occasionally assisting said buyer from time to time in setting up and organizing its Minneapolis office, of which decedent's business formed the nucleus.

9. The decedent and his wife moved to California and made it their permanent home and domicile in 1922.

10. Decedent received from the sale of his coal business the sum of \$100,000 which he thereafter proceeded to invest in California in apartment houses and income property and in mortgages and trust deeds with various firms located in Los Angeles before and after making California the permanent domicile of him and his wife.

11. Frank K. Sullivan, the decedent, was born April 6, 1866, and was, in November, 1943, and at the date [40] of his death January 9, 1944, 77 years of age. His wife, Hattie B. Sullivan, was born May 24, 1867, and was 76 years of age on January 9, 1944.

12. The decedent, Frank K. Sullivan, was examined by Dr. Julius Kahn of Los Angeles, on November 18, 1943, and admitted to Cedars of Lebanon Hospital for further examination by Dr. Kahn on November 21, 1943. He was discharged from the hospital on November 24, 1943. A copy of decedent's hospital chart and patient's record at Cedars of Lebanon Hospital, showing all treatments and conduct between November 7 and November 27, 1943, is attached hereto marked Exhibit 3-C and incorporated herein by this reference. On December 16, 1943, decedent was admitted to California Lutheran Hospital and operated upon on December 20, 1943, by Dr. H. G. McNeil of Los Angeles. Preoperative diagnosis for such operation was Car-

cenoma of the Pancreas. A second operation was performed January 3, 1944, by Dr. McNeil and the decedent succumbed January 9, 1944, at the California Lutheran Hospital. A copy of the decedent's hospital record and patient's chart of the California Lutheran Hospital is attached hereto marked Exhibit 4-D and incorporated herein by this reference.

13. The decedent's will was executed November 30, 1943, in the presence of Clyde C. Triplett of Los Angeles, [41] California. A copy of said will is attached hereto marked Exhibit 5-E. Mr. Triplett also advised and assisted decedent and Hattie B. Sullivan, his wife, in the preparation of the agreements referred to in subparagraphs (a), (b) and (d) of paragraph 5 above and the deeds, assignments and other instruments executed in connection therewith or pursuant thereto.

14. Prior to the transfer date, all the properties listed in paragraph 4(b), and referred to in paragraph 5(b), were held in joint tenancy by Frank K. Sullivan and Hattie B. Sullivan, except for item (3) of paragraph 4(b) which was held in the name of Frank K. Sullivan alone.

With respect to the assets transferred in accordance with paragraph 5(b) above and referred to and specifically identified in paragraph 4(b), transfers thereof were effected as follows:

Items (1), (2) and (4) of paragraph 4(b); Frank **K. Sullivan and Hattie B. Sullivan** joined as grantors to Frank K. Sullivan. Photostatic copies of the deeds, all being dated November 24, 1943, covering

the transaction are attached hereto marked Exhibit 6-F. These deeds were all recorded in the office of the County Recorder of Los Angeles County on December 6, 1943. Thereafter, deeds having been executed on the same day by Frank K. Sullivan and covering the same parcels of property conveying to Hattie B. Sullivan, his [42] wife, an undivided one-half interest therein, were recorded in the office of the County Recorder of Los Angeles County on December 9, 1943. Said deeds are attached hereto marked Exhibit 7-G and made a part hereof by this reference.

Item 3 of paragraph 4(b); a deed was executed on the 24th day of November, 1943, by Frank K. Sullivan, also known as Frank F. Sullivan, conveying to Hattie B. Sullivan, his wife, an undivided one-half interest therein. Said deed was recorded in the office of the County Recorder of Los Angeles County on December 6, 1943, and is attached hereto marked Exhibit 8-H and by this reference incorporated herein.

Transfers of items (9), (10), (11), (12) and (13) of paragraph 4(b), and referred to in paragraph 5(b), were effected as follows:

On the 24th day of November, 1943, Frank K. Sullivan and Hattie B. Sullivan executed assignments of deed of trust covering all of said items to Frank K. Sullivan. All of these assignments were recorded in the office of the County Recorder of Los Angeles County on December 9, 1943, and are attached hereto marked Exhibit 9-I and by this

reference made a part hereof. Thereafter assignments of deed of trust dated November 24, 1943, executed by Frank K. Sullivan and assigning to Hattie B. Sullivan, his wife, as her separate property, an undivided one-half interest in said items (9), (10), (11), (12) [43] and (13) of paragraph 4(b) were recorded in the office of the County Recorder of Los Angeles County on December 14, 1943, and are attached hereto marked Exhibit 10-J and by this reference incorporated herein.

No transfer of record was made of items (5) and (8) of paragraph 4(b) until subsequent to the death of Frank K. Sullivan, at which time transfers were effected in accordance with the decree of distribution in the Estate of Frank K. Sullivan and in accordance with the agreement of Frank K. Sullivan and his wife, Hattie B. Sullivan, dated November 24, 1943, which agreement is attached to the petition on file herein as Exhibit B and referred to in paragraph 5(a) and (b) hereof.

On November 24, 1943, the Bonnie Lee Apartments Corporation and the St. Francis Hotel and Apartments, a corporation, being the issuing companies of the securities referred to in items (6) and (7) of paragraph 4(b), were and had been for sometime past in the process of liquidation and no transfer of record of the securities referred to in items (6) and (7) of paragraph 4(b) was effected.

15. Attached hereto marked Exhibit 11-K is a

photostatic copy of the death certificate of Frank K. Sullivan.

Dated at Los Angeles, California, this 1st [44] day of December, 1947.

/s/ CHARLES OLIPHANT,
Chief Counsel, Bureau of
Internal Revenue,
Counsel for Respondent.

/s/ PHILIP C. JONES,
/s/ ALBERT MOSHER,
Counsel for Petitioner. [45]

EXHIBIT 1-A

840 So. Sherbourne Dr.
Los Angeles, California
November 19, 1943.

Nelson Douglass & Co.
510 South Spring St.,
Los Angeles, California.

Gentlemen:

This letter will be your authority to deliver to Floyd K. Sullivan, or his account, the stock certificates set out below:

These stocks are registered in the name of Frank K. Sullivan and Hattie B. Sullivan, as Joint Tenants, or in the name of Frank K. Sullivan, and are included in our account with you.

It is our intention to make a gift of these securities to Floyd K. Sullivan and you are, by this letter, instructed to deliver said certificates to him or his

account, and accept his instructions in the disposition of the proceeds in connection with any sales of them.

We are releasing any interest in and to the following stocks and you may accept this letter as your full discharge of any accounting thereof.

2500 sh. Harris Manufacturing Co. Ctf. No. 963-977; 157-161; 484-488

125 sh. Pacific American Investors Pfd. Ctf. No. P521 and P01190

1150 sh. Pacific American Investors Com. Ctf. No. C4378-4388; C01758

40 Units Southwestern Freight Lines

100 sh. Pacific Intermountain Express Co. Ctf. No. PX169

75 sh. Boston Edison Co. Common Ctf. No. 38682

100 sh. First Boston Corp. Ctf. No. B032079

15 sh. International Business Machine Ctf. No. F212591

10 sh. W. B. Coon Co. 7% Pfd. Ctf. No. P0316.

50 sh. Bank of American Ctf. No. E21078 and E70352

100 sh. Walt Disney Productions Conv. Pfd. Certificate No. 2310.

It is also our intention to give Floyd K. Sullivan \$10,000 Gulf Mobile & Ohio Temporary Bonds which we have in our own possession. He will deliver these bonds to you for his account.

Very truly yours,

/s/ FRANK K. SULLIVAN.

/s/ HATTIE B. SULLIVAN [46]

EXHIBIT 2-B

FIRST CALIFORNIA COMPANY

Investment Securities
MAdison 6-5781
510 Spring Street
Los Angeles 13, California

November 26, 1947

Mr. Philip C. Jones
417 S. Hill, Room 1075
Los Angeles 13, Calif.

Dear Mr. Jones:

In accordance with your request we have examined our records concerning the securities referred to in the letter of November 19, 1943, to us from Frank K. Sullivan & Hattie B. Sullivan. The certificates were received on November 16, 1943, and were in the names as listed:

- 25 Bank of America NT & SA—Frank K. Sullivan
- 25 Bank of America NT & SA—Frank K. & Hattie B. Sullivan JTRS
- 75 Boston Edison Co.—Frank K. & Hattie B. Sullivan JTRS
- 10 W. B. Coon Co. Pfd. W/W—Frank K. Sullivan
- 100 First Boston Corp.—Frank K. & Hattie B. Sullivan JTRS
- 2500 Harris Mfg. Co. A—Frank K. Sullivan
- 15 International Business Machine Corp.—Frank K. & Hattie B. Sullivan JTRS

1150 Pacific American Inv. Com—Frank K. Sullivan
125 Pac. American Inv. Pfd.—Frank K. Sullivan
100 Pacific Intermountain Express Pfd.—Frank K. Sullivan
40 Units S. W. Freight Lines—Frank K. & Hattie B. Sullivan.
100 Walt Disney Conv. Pfd.—Frank K. & Hattie B. Sullivan

In addition on December 14, 1943 we received \$10,000 Gulf Mobile & Ohio RR 3½/52 for the account of Floyd Sullivan and delivered the same bonds which were in bearer form to Floyd K. Sullivan on March 15, 1944.

The securities which we received on November 16th for the account of Floyd K. Sullivan were sent to transfer and the resulting certificates were dated as follows:

50 Bank of America—Floyd K. Sullivan 12/4/43
75 Boston Edison—Floyd K. Sullivan 12/6/43
10 W. B. Coon Co. Pfr. W/W—Floyd K. Sullivan 12/7/43
100 Walt Disney Conv. Pfd.—Floyd K. Sullivan 12/2/43
100 First Boston Corp—Floyd K. Sullivan 12/6/43
2500 Harris Mfg. Co. A—Floyd K. Sullivan 12/2/43
15 Int. Business Machines—Floyd K. Sullivan 12/7/43
65 Pacific Amer. Investors Pfd.—Floyd K. Sullivan 11/23/43

100 Pac. Intermountain Express Pfd.—Floyd K.
Sullivan 12/14/43

40 Units S.W. Freight Line—Floyd K. & Hattie
B. Sullivan 7/6/43 (Common) 6/1/43 (Pfd.)

These securities from transfer were delivered
from the account of Floyd K. Sullivan on March
15, 1947.

In addition 500 shares Pacific American Investors
Common was sold of December 7, 1943, and 650
shares of the same stock was sold on January 10,
1944. 60 Pacific American Investors Pfd. was sold
on November 16, 1943, and all these sales were for
the account of Floyd K. Sullivan.

We trust this is the information you need. How-
ever, if additional data is required, please let us
know.

Your very truly,

FIRST CALIFORNIA
COMPANY,

[s] J. M. SCHOFFEL. [48]

EXHIBIT 3-C

Form 14 10M 11-42

Cedars of Lebanon Hospital

PATIENT'S RECORD

Hospital No. 96422

Room No. 418

Adm. Date: 11-21. 1943, at 4:05 p.m.

Dis. Date: 11-24-43.

Name: Sullivan, Mr. Frank K.

* * * *

Admitted by M. Bukly.

Doctor: J. Kahn, E. Shapiro.

Diagnosis (enter each and every one): Obstructive jaundice, cause not determined.

Condition on Discharge (enter for each diagnosis): Not treated.

* * * *

Record checked

/s/ J. KAHN,

Attending Physician. [49]

Cedars of Lebanon Hospital

TREATMENT RECORD

96422

Name Sullivan Ms. Frank Room 418

I

Page

Date	Doctor's Orders	Nurses' Notes
11-24-43	<p>1. I. X-ray</p> <p>Poly stools for bile & blood.</p> <p>Give Mag. in small units if nec to obtain Spec.</p> <p>Hippuric acid synthesis & Octopus Indigo</p> <p>Urine for Chobalini</p> <p>Blood -</p> <p>Serum Lipase.</p> <p>Cholesterol</p> <p>Cholesterol esters</p> <p>Low fat. hi carbohydrate diet</p> <p>P.O. Dr. Shafiq P. Ober</p>	<p>6:30 pm Amphetamine</p>
11-22-43	<p>RESUME USUAL OR ORDERED DIET BUT GIVE NO ENEMAS OR CATHARTICS. X-RAY DEPT.</p>	<p>J. Kalan 10:20 am J. B. B. Z.O.</p>
11-23-43	<p>Barium enema in C.M. for Ca -</p> <p>P.O. from X-ray per Dr. Kahn</p> <p>R. Ober</p>	<p>1:00 pm S. L. S. Ober</p>
11-23-43	<p>X-RAY EXAMINATION HAS BEEN COMPLETED. RESUME FURTHER ORDERS FROM THE ATTENDING PHYSICIAN X-RAY DEPT. G.S.</p>	
11-24-43	<p>B.E. X-RAY EXAMINATION HAS BEEN COMPLETED. RESUME FURTHER ORDERS FROM THE ATTENDING PHYSICIAN X-RAY DEPT. G.S.</p>	

(Doctors write in black ink, nurses in red. Nurse checks orders as she carries them out, noting time. Doctors and nurses must sign their notes. When order is discontinued, doctor writes "Discontinue, etc." giving date and naming order. A vertical red line is drawn through orders as soon as they are "D"

Exhibit 3-C—(Continued)]

CEDARS OF LEBANON HOSPITAL

PROGRESS RECORD

Hospital No.

96422

NAME

Suliman M. Shukr ROOM 418 DR. J. WATSON E. SHAY

Date

Note progress of case, complications, change in diagnosis, condition on discharge, instruction to patient, etc.

11/25/43. Cholesterol low; phosphate high
Icterus index 68; Angiostat +0.
Pt. sent home to return dates for completion
of work *J. Kahn.*

PROGRESS RECORDS

Visiting doctors should make progress note every third day.

Exhibit 3-C—(Continued)

F. K. Sullivan

Date _____
General Appearance: Rather thin, well developed; not ac. ill. Jaundice
parent Age: 73 Ht.: 65" Pulse: 60 Temp.: 97° Bl. Pr.: 120/80

Head and Scalp: ✓ few ex coracines
Appearance: X some conjunctival injection; icterus.
Actions: ✓
Apex: X lemniscal spacing
Anus: X not seen

Code: O—Not Examined
X—Pathology
✓—Normal

Discharge: ✓
Anterior Sinuses: ✓ some transillumination
OTH: ✓
Teeth: ✓ many carious
Tongue: ✓
Nails: ✓
Intraocular Membrane: X some redness

Thyroid: ✓
Lungs: ✓
Cardiac: ✓
Respirations: ✓
ST: ✓
Contour: X dimensions of face, sternum
Expansion: ✓
Breasts: ✓

Abdomen: ✓
Rectal: ✓
Urt: ✓
Per: ✓
Orders: ✓
Rate: ✓
Rhythm: ✓
ounds: ✓
OMEN: ✓
Contour: X Liver palp 3-4 cm below C.M.
Assess: ✓
Tenderness: ✓
Ermia: X Slgt. bulge at it

Extremities: ✓
Vitalia: ✓
Tum: ✓
Lexis: ✓
Deep: ✓
Superficial: ✓

PRESSION:

Obstructive Jaundice
Probable Ca of Pancreas

Julius Kahn, M.D.

JK/jf

Exhibit 3-C—(Continued)

Julius Kahn M.D.
123 North San Vicente Boulevard

Edward Shapiro M.D.
Beverly Hills, California

Sullivan, Mr. F. K.

11-7-43

URINALYSIS:—

Appearance—deep amber
Reaction—acid
Sp. Gr.—1.017
Sugar—negative
Albumin—negative
Acetone—negative
Bile—positive.
Microscopic—rare squamous
and renal epithelial cells.
Occasional calcium oxalate
crystals.

BLOOD COUNT:—

Hæmoglobin—106%—17 grams
Erythrocytes—5,350,000
White blood cells—5,900
Polymorphonuclears—63%
Lymphocytes—22%
Large mononuclears
& Transitionals—11%

SEDIMENTATION TIME:—15 minutes—2 mm., 30 minutes
—7 mm., 45 minutes—105. mm., 60 minutes—13 mm. 75
minutes—14 mm., 105 minutes—16 mm.

11-18-43 COMPLAINTS: Jaundice.

Loss of weight	Dark Urine
Anorexia	Light stools
Weakness	Poor eyes, dim
Abdominal pain	hearing
Drowsiness	Nocturia
Cold Cough	Poliuria

No headaches no vertigo; no syncope; no nervousness; no paresis. Other special senses O.K. No nose and throat trouble; no chest pain; no dyspnoea; no heart consciousness: no dysuria; no fever, chills, nor sweats.

PERSONAL:—Age 77; married; one son (in Los Angeles) age 41; born in Penna.; resided in Penna., midwest, California. Diet—general—all classes of food. Led normal existence up to onset of this trouble. No alcohol to speak of. Tobacco—3 or 6 cigars daily. Lives with wife.

PAST ILLNESSES:—Typhoid—40 years ago, not especially severe, no complications. Quinsy sore throat frequently in boyhood. Sciatica—bad spell 18 years ago.

FAMILY HISTORY:—Father died—63. Malignant tumor of throat. Ill 6 months. Sarcoma.

Mother died—94. No special illness.

One brother—Died in childhood—acute infectious disease.

Two sisters—Died in childhood—acute infectious disease.

Brother died—74. Cancer.

Sister alive and well—70.

(Signed) J. KAHN.

[53]

Exhibit 3-C—(Continued)

Sullivan, Mr. F. K.

11-18-43 Patient felt quite well up to three weeks ago. Since then there were no definite complaints except as noted below:

Jaundice—yellow skin, noted last two or three days.

Amber urine—noted last three or four days.

Stools light last three or four days—light tan. Has been having daily movement part formed and part soft, since last three or four days. Movement not especially bulky. Ordinarily has one normal, formed movement daily.

Loss of weight—fifteen pounds in the past year. in the past two months eight to ten pounds. No great loss before one year. Had not eaten less to account for this loss.

Anorexia—lack of appetite only noted in last week. Previously ate everything with zest. Has been eating less in last few days.

Weakness—has been present only in the last few days and is not marked.

Drowsiness—has been present the last few days.

Nocturia—once nightly for the last year. Gets up toward morning. No dysuria.

Poliuria—urinates more frequently in last two weeks. Urinates three or four times a day; amount variable.

Cold—slight, has been present some weeks with slight cough.

Eyesight has been poor for many years. No worse lately.

Hearing somewhat diminished, worse on left side.

Abdominal pain began four or five days ago, as a mild tenderness beneath the right costal margin. After three or four days it left. It was never sharply defined.

(Signed) J. KAHN.

| 54 |

JAN 9 1941

ca 1323

CONTRACT FOR SERVICES AND SUMMARY OF PATIENT'S RECORD

LUTHERAN HOSPITAL SOCIETY OF S. CALIF.
(A Non-Profit Charitable Organization)Operating
THE CALIFORNIA HOSPITAL
THE SANTA MONICA HOSPITAL

242553

242553
1150

Hospital No.

SULLIVAN, Mr. FRANK A.		OB NB	GU E.N.T.	Other Services	12-16-41	A.M. 4:10 P.M.	
		Priv.		1150	?		
Street Address		City	Phone	Type of Account.		Rate per Day	Est. Per. Hosp.
H-35		PT-5474 P		SUITE.		Yes	No.
Post Street Address		City	Phone	Admitting Diagnosis		Date	Prev. Hospital Admission
8 @ W D Sep.		1114		Dr. 446 116 Neil			
Bos.	Marital Status	Religion		Attending Physician			
6-66	F	1114		Dr.			
Birth	Place of Birth	Nationality		Intern			
EDWARD							
tion of Patient		Accompanied by	Street Address	City	Phone		
Relative or Friend		Relationship	Street Address	City	Phone		
to be Paid by		Relationship	Street Address	City	Phone		
Name of Guarantor		Employed by	Street Address	City	Phone		
Bills to (Name or Address)			Ambulance	Carried	Wheel Chair	Walker	

WORKING DIAGNOSIS

Carcinoma of prostate

FINAL DIAGNOSIS
(Enter Each and Every One)

Carcinoma of prostate

CONDITION ON DISCHARGE
(Enter for Each Diagnosis)

Died

COMPLICATIONS

Obstruction of urine

OPERATIONS

Cholecystectomy
Cholelithogastroscopy

TANTS

ed by Committee

W.B.

I, the undersigned, have carefully reviewed all treatment, operative progress and any and all other records a part of this chart; and I do hereby approve each and all of them as being, to the best of my knowledge, accurate and complete.

Resident

(LOVER)

OREG McNair M.D. Attending Physician

Exhibit 4-D—(Continued)

MS-5 5M 7-42

PERSONAL HISTORY

Lutheran Hospital Society of So. Calif.
(A Non-Profit Charitable Organization)

Operating

The California Hospital
The Santa Monica Hospital

Doctor H. G. McNeil Hospital No. 242553

Name: Frank K. Sullivan

Working Diagnosis: Cancer of the head of the pancreas.

Chief Complaints: 1. loss of weight. 2. Jaundice.
3. Loss of appetite.

Present Illness (onset and chronogolical course):
About November 10th, 1943 first noticed jaundice unassociated with gastric distress of any kind. He went to the Cedars of Lebanon Hospital where he was under the care of J. Kahn who did a complete G. I. Study and other necessary laboratory work and discharged him as a surgical case.

Inventory of Symptoms By Systems

Head: Normal for his age.

Respiratory: Normal.

Cardio-Vascular: No history of previous trouble.

/s/ H. G. McNEIL, M.D.,

(Over)

[56]

Exhibit 4-D—(Continued)

Gastro-Intestinal: No history of any kind.

Genito-Urinary: Nocturia once or twice.

Nervous: Normal.

Skin, Bones and Joints: Normal.

Habits

(Exercise, Alcohol, Tobacco, Tea, Coffee, Drugs, etc.): No alcoholic and no tobacco.

Past History

Childhood: Normal.

Adult: No history of any illness of any kind.

Surgical: None.

Former Hospital Admissions and Diagnosis:
None.

Family History

Irrelevant.

/s/ H. G. McNEIL,

Intern.

[57]

Exhibit 4-D—(Continued)

Form MS-6 10M 8-42 LP

PHYSICAL EXAMINATION

[Lutheran Hospital Society of So. Calif. heading]

Doctor: H. G. McNeil. Hospital No. 242553

Name: Frank K. Sullivan.

Address: 840 So. Sherbourn.

Summary of Physical Examination

General: Deeply jaundiced. Height: 5-8. Weight: 139. Loss: 16 lbs. Temperature: 98. Pulse: 90. Quality: Good. Respiration: 17. Character: Good. Blood Pressure: Sys: 140, Dias: 80, Pulse: P.

General Appearance: (Development, Nutrition, Apparent Age, Race, Sex, Behavior, etc.) Age 78.

Skin: Deeply jaundiced. Shows the effect of the loss of weight.

Eyes and Ears: Eyes are corrected. Hearing is normal for his age.

Nose and Lips: Normal.

Teeth, Tongue and Gums: Normal.

Tonsils and Pharynx: Normal.

Neck: (Thyroid, Lymphatic, etc.) Normal.

Thorax: Lung sounds are normal. Expansion is good.

General Inspection: Good.

Breasts: Normal.

Lungs: (Inspection, Palpation, Percussion and Auscultation) Sounds are normal. Expansion is good.

(Over)

[58]

Exhibit 4-D—(Continued)

Heart: (Inspection, Palpation, Percussion, Auscultation, and Peripheral Vessels) Slightly enlarged to the left. 4 extra systoles per minute. No murmurs.

Abdomen: (Appearance, Distention, Scars, Rigidity, Tenderness, Masses, Stomach, Liver, Gall-bladder, Spleen, Colon, Kidneys, etc.) Flat. Not sensitive. Liver slightly enlarged. There is an apparent mass just below the liver outline which is freely moveable and not painful. Kidneys are not sensitive. Cannot be palpated. Spleen is normal in size. No fluid in the abdomen.

Back (Spine, Kidneys, Tenderness, etc.) Normal.

Genitalia: Male (Penis, Scrotum, Testes, Inguinal Rings, Prostate, etc.) Normal. Prostate is normal for his age.

Rectum and Anus: Normal. No evidence of hemorrhoids.

Extremities: (Bones, Joints, Vessels, etc.) All normal.

Reflexes: Essentially normal. **Pupils:** Eq. and Reg: Yes. React Lt: Yes. React. Accomm: Yes. Superficial: Normal. Deep Tendon: Normal. Babinski, Gordon, Oppenheim, etc.: None.

Tentative Diagnosis: Carcinoma of the pancreas.

/s/ H. G. McNEIL,

Intern.

[59]

Exhibit 4-D—(Continued)

MS-3A-5M-5-43-LP

OPERATIVE RECORD

[Lutheran Hospital Society of So. Calif. heading]

Hosp. No. 242553

Date: Dec. 20, 1943

Name: Sullivan, Mr. Frank. Room No. 247.

Doctor: H. G. McNeil.

Surgeon: Dr. H. G. McNeil.

Assistant: Dr. W. McKenna.

House Surgeon: Dr. E. Mora.

Anesthetist: Dr. S. Kreinman.

Instrument Nurse: M. Jones.

Sponge Nurse: J. Ford.

Preoperative Diagnosis: Carcinoma pancreas.

Postoperative Diagnosis: Carcinoma of the pancreas.

Operation: Cholecystostomy.

Operation Started: 10:20 a. Ended: 11:30 a.

Anesthetic Used: Ether: Started: 10:05 a. Ended: 11:05 a.

Operating Room Used: A.

Findings: Upon opening the abdomen a distended gallbladder presented and the peritoneum was deeply tinted with bile. The liver and other organs observed were also bile stained. The liver was not

Exhibit 4-D—(Continued)

greatly enlarged. There was a firm mass approximately 2x3 cm. in size in the head of the pancreas. Stomach was apparently normal. No enlarged lymphatic glands and no stones could be felt in the common duct.

What was done: Through the usual right diagonal rectus incision the abdomen was opened and the above exploration made. It was decided not to attempt at this time to anastamose the gallbladder with the stomach. Accordingly, the gallbladder was drained, tube inserted and the gallbladder wound closed with No. 1 chromic purse string. The tube was sutured in place by a No. 2 plain catgut suture and the wound closed with No. 1 chromic in the peritoneum, muscle and fascia. Three retention sutures. Skin clips.

[Marginal note]: ether—Iodine—alcohol prep.

HGM:K Dictated 1-2-44.

Sponge count correct: /s/ M. Jones, J. Ford.

/s/ H. G. McNEIL, M.D.

Surgeon.

[60]

Exhibit 4-D—(Continued)

MS-3A-SM-11-43-LP

OPERATIVE RECORD

[Lutheran Hospital Society of So. Calif. heading]

Hosp. No. 242553 Date: Jan. 3, 1944

Name: Sullivan, Mr. Frank. Room No. 247.

Doctor: H. G. McNeil.

Surgeon: Dr. H. G. McNeil.

House Surgeon: Dr. H. Solomon.

Anesthetist: Dr. W. J. McKenna.

Instrument Nurse: E. Roberts.

Sponge Nurse: J. Ford.

Preoperative Diagnosis: C A pancreatic.

Postoperative Diagnosis: Carcinoma of pancreas.

Operation: Cholecystogastrostomy.

Operation Started: 12:36 p.m. Ended: 2:00 p.m.

Operating Room Used: A.

Anesthetic Used: Ether. Started: 12:15 p.m.

Ended 2:00 p.m.

Findings: Gallbladder was distended and a solid mass about 4x2 cm. stony hard in consistency was palpated in the region of the pancreas.

What was done: Original operative incision reopened; suction was used to drain the distended gallbladder. The distal end of the gallbladder was anastomosed to the anterior surface of the pyloric end of the stomach. Two layers of sutures effected the anastomosis, the first layer being of gastrointestinal and the outer layer of linen. The peritoneum was closed using No. 1 chromic, the fascia with chromic No. 1 single, three retention sutures of silk.

Exhibit 4-D—(Continued)

Skin closed with clips. Chaffin suction tube placed in the gallbladder region tied through the wound by silk suture through the skin.

HS:K Dictated 1-3-44.

[Marginal note]: Ether & Tr. Mentholate prep.
Specimen to Lab. Yes [] No. [v].

Sponge count correct: /s/ E. Roberts, J. Ford.

/s/ H. G. McNEIL, M.D.,
Surgeon.

[61]

MS-12-A 10M 1-43

PROGRESS RECORD

[Lutheran Hospital Society of So. Calif. heading]

Hospital No. 242553

Name: Sullivan, Mr. Frank. Room 247.

Dr. H. G. McNeil.

12/21/43—10:15 p.m.—Patient became irrational and jumped out of bed tearing off his dressing and pulling out his drainage tube from the abdominal wound.

The wound otherwise is essentially undisturbed and some watery sanguineous drainage.

Sterile dressings were reapplied and restraints and sedative ordered.

12/30—Patient still deeply jaundiced—but general condition is better. Wound draining bloody bile stained fluid.—McN.

1/9/44—Patient expired 2:40 a.m. 1/9/44.

F. B. Schuler.

[62]

Exhibit 4-D—(Continued)

TREATMENT RECORD

PHYSICIANS ORDERS

LUTHERAN HOSPITAL SOCIETY OF S. CALIF.

(A Non-Profit Charitable Organization)

Operating

THE CALIFORNIA HOSPITAL

THE SANTA MONICA HOSPITAL

HOSPITAL NO. 24263-8 ✓

Sullivan, Mr. Frank ROOM 247 DR. H. H. McNeil

MEDICATION AND TREATMENT	DATE	DIET
① 1,000 cc 5% Glucose in Saline this A.M. & P.M.		
② Hydrozome 4 mg. Subcutaneous this noon to evening.		
③ Use Echaffin suction on Abdominal tubes P. R. N.		
Sodium Sulfadiazine I.V. 10cc 25% — cruciferous	10cc D. & W. 25% —	
Expectation will subside if you can get it to settle down		
④ D.C. M. Sulph. ✓		
⑤ Give Elixir B.t.b. 3i ✓ P. R. N. to relieve itch.		
⑥ L.S. Cream today ✓		
⑦ D.C. 1/4 to force fluids ✓ by mouth.		
⑧ Sulphathiazole gr. viii ss ✓ B.i.d. 1 & 3 given		
⑨ ABS & B. Pills #1 at bed- time tonight — V.O. Dr. McNeil per telephone	✓	
1/14/44 8:00 P.M.		
No not change dressing incised Dr. McNeil sees pt. in a.m.	V.O. Dr. McNeil per telephone	
⑩ Select Diet - push feeding. ⑪ ABS & 2 Pills #1 this P.M. ⑫ Dressings to be changed as above.		
V.O. Dr. McNeil per telephone		

TREATMENT RECORD

PHYSICIANS ORDERS

LUTHERAN HOSPITAL SOCIETY OF SO. CALIF.
 (A Non-Profit Charitable Organization)
 Operating
 THE CALIFORNIA HOSPITAL
 THE SANTA MONICA HOSPITAL

HOSPITAL NO 242853

Kilman, Mr. Frank ROOM 247 DR H. G. Meier

MEDICATION AND TREATMENT

DATE

DIET

46 U.P.S. OTHER SIDE FIRST

500 mg Sulfadiazine Sol. 10cc
 i. d. i. H. 20 400cc I.V. stat.

2. Lerrine tube

Codiene gr 1/2 p. r. t.

for restlessness

per phone Dr. H. G. Meier
 per g. med. form

SINCE 1920

Exhibit 4-D—(Continued)

MS-15 10M 5-43 LP

TREATMENT RECORD

PHYSICIANS ORDERS
 LUTHERAN HOSPITAL SOCIETY OF S. CALIF.
 (A Non-Profit Charitable Organization)
 Operating
 THE CALIFORNIA HOSPITAL
 THE SANTA MONICA HOSPITAL

HOSPITAL NO. 2425-53

NAME		DR.	
<i>Sullivan Mr. Frank</i>		<i>H. G. McNeil</i>	
DATE	MEDICATION AND TREATMENT	DATE	DIET
12/24	<p>Drugs today - ✓</p> <p>2 A.A. & C bed time - ✓</p> <p>3T C & A.C. 12 noon ✓</p> <p>7 P.M.</p> <p>Sulfathiazole gr. XV Stat 7 P.M. then gr. 7 1/2 at 11 P.M. & 3 A.M. Phone order of Dr. Mc Neil per Left Probst R.N.</p> <p>① Cut Elix B.C. to once a day at bed time only.</p> <p>② Sulfathiazole as above if Temp goes over 100°</p> <p>③ 2 A.B.S. & B. Pills tonight Verbal Order of Dr. Mc Neil per Left P.</p>		Special & Kara
12/26	Allow Patient to sit up in bed for short periods - <i>V.O. Dr. Mc Neil</i> per Left P.		
12/28	Bilron gr. T st. id. ✓ <i>V.O. Dr. Mc Neil</i> per Left P.		
12/31	- order Lectine Sulfox ✓ Vitamin K g. 1 at meal time <i>V.O. Dr. Mc Neil</i> per Left P.		
1/1/44	Specimen of Urine to Lab. <i>V.O. Dr. Mc Neil</i> per Left P.		

Exhibit 4-D—(Continued)

TREATMENT RECORD

PHYSICIANS ORDERS
 LUTHERAN HOSPITAL SOCIETY OF SO. CALIF.
 (A Non-Profit Charitable Organization)
 Operating
 THE CALIFORNIA HOSPITAL
 THE SANTA MONICA HOSPITAL

HOSPITAL NO 242550.

Dr. McNeil

Sullivan, Mr. Frank ROOM 247

TE	MEDICATION AND TREATMENT	DATE	DIET
USE OTHER SIDE FIRST			
1/44	① I.V. 1000 cc 5% Glucose in Saline at 8 A.M. ✓ 1-3-44		
1/44	② S.S. Enema this P.M.		
1/44	③ No Breakfast ✓		
1/44	Surgery at 12 Noon 1/3/44. N.O. Dr. Mc Neil per. L.G.P.		
1/44	I.V. Glucose 5% 1000 cc 20 M.R. 1/4 M.R. - for pain. Water as tolerated P.O. Dr. Mc Neil per. L.G.P.		
1/44	7 46 P.M. Glucose 5% in N.S. 1000 cc cl.b. in A.M. (about 8)		Liquid diet as tolerated Dr. W.W. Mc Neil per. G. Marpin
1/44	Sulfathiazole gr XV @ 12:30 a.m. ut gr XV @ 4:30 a.m. Repeat @ 8:30 a.m. L. Solomon. Mr. S. 18 gr. P.R.N. for Pain Sulfathiazole in case Trypt. 1 goes over 10, then as follows gr XV at over then gr VIII every 4 hrs. for 2 doses.		
1/44	Karo B.i.d. Fevian Tube ✓		
1/44	Hokinone 4 mg. Subcutaneous Repeat in 4 hrs.		

Exhibit 4-D—(Continued)

MS-13 10M 5-43 LP

TREATMENT RECORD

PHYSICIANS ORDERS
 LUTHERAN HOSPITAL SOCIETY OF S. CALIF.
 (A Non-Profit Charitable Organization)
 Operating
 THE CALIFORNIA HOSPITAL
 THE SANTA MONICA HOSPITAL

DR. T R 0561 office
 Adm - F1 - 2753
 HOSPITAL NO. 242553

NAME Sullivan, Mr. Frank

ROOM 247

DR. H. B. McNeil

DATE	MEDICATION AND TREATMENT	DATE	DIET
12/16/43	Liver Drin. Elix. P.C. - 3 1/2 at 9 A.M. ✓ repeat if needed for sleep C.p. Lotion till p.c. Tech. glykaydote - till p.c. 3 m. thick of Marg. 7 a.m. daily Order C.P.C. ✓ Urine - ✓ Sputum Sulax ✓ Bleeding time ✓	12/16/43	soft diet soft diet with 3 m. of Marg. Syrup twice a day meal.
12/18	Liver Drin. ✓ Elix. P.C. at 9 A.M. ✓ C.p. Lotion till p.c. ✓ Tech. glykaydote - 4 daily ✓ Morphine in 2 drs. ✓ Hyps. 1 C.C. intramuscular ✓ Vitamin B. Complex. Daily ✓		as above
12/20	Prep for abdominal operation at 10 a.m. Monday ✓ Repeat Sputum Sulax Monday & Tues. ✓ Thinner. Soda - this 20 ✓ Give Demerol gr 1/2 at 8 A.M. - ✓ Morphine 1/2 Atropine 1/150 9 A.M. ✓		HD.
12/20	Give 1/2 C.C. Glucos. 7.5 Ibs. ✓ Morphine 1/6 - 6 hour for pain Sputum Sulax		

TREATMENT RECORD

PHYSICIANS ORDERS

LUTHERAN HOSPITAL SOCIETY OF SD. CALIF.

(A Non-Profit Charitable Organization)

Operating

THE CALIFORNIA HOSPITAL

THE SANTA MONICA HOSPITAL

HOSPITAL NO. 242553

NAME Sullivan, Mr. Frank

ROOM 247

DR. H. G. McNEIL

DATE	MEDICATION AND TREATMENT	DATE	DIET
1/43	USE OTHER SIDE FIRST		
1/43	01,000 ^a 5% Glucose in Saline 1. V. tonight.		
③	Catheterize tonight if necessary.		
③	May be turned	1/21	Liquids - 3 or 4 oz twice daily Ice cream
Phone orders of Dr. McNeil per L.P.N. P.H.			
1/43	Repeat above orders today		
	V.O. Dr. McNeil		
1/43	Sulfathiazole gr. XV Stat Phone orders Dr. McNeil per L.P.N.		
1/43	Repeat Sulfathiazole 2 tablets, at 12 P.M. - ✓ 4 Q.M. ✓ 8 Q.M. ✓		
	Hyper Calamine 1/2 gr. in needle for rashes -		
	Repeat I.V. Glucose & saline in C.D.		
1/43	No Luminal until long Restraints		
1/43	Sulfathiazole gr. 7 1/2 g. 4 hrs. after 8 P.M. No I.V. this A.M.		
	V.O. Dr. McNeil L.P.N.		
	Cuffkin suction attached to tube. Stat.		
	V.O. Dr. McNeil per L.P.N.		
1/43	Give Sulfathiazole gr. 7 1/2 at 12 noon & 4 P.M. only, then D.C.		
	V.O. Dr. McNeil per L.P.N.		

EXHIBIT 5-E

LAST WILL AND TESTAMENT OF
FRANK K. SULLIVAN

I, Frank K. Sullivan, of Los Angeles, California, declare this to be my Last Will and Testament, and revoke all former wills, and codicils to wills.

First: I direct my Executors to pay out of my general estate all my just debts, last illness and burial expenses, and all Federal and State legacy and inheritance taxes.

Second: I declare that I am married, that my wife's name is Hattie B. Sullivan, and that we have one child, to-wit, a son, Floyd K. Sullivan, of Beverly Hills, California.

Third: I give, devise and bequeath to my said wife Hattie B. Sullivan, a life estate in all my property of every kind and nature, and wherever the same may be situated, and the remainder interest in all of my said estate I give, devise and bequeath to my son Floyd K. Sullivan.

Fourth: In the event my said wife, Hattie B. Sullivan, predeceases me, or does not survive distribution, then I give, devise and bequeath all of my said property to my son, Floyd K. Sullivan, or should my said son be not then living, I give, devise and bequeath all of my said property as follows:

One-third (1/3) thereof to Alice E. Sullivan, wife of my son Floyd K. Sullivan, or if she be not living, then to Sally Sullivan, daughter of my son Floyd K. Sullivan, and any other child or children of my said son living at the time of my death, in equal shares;

Exhibit 5-E—(Continued)

One-third (1/3) thereof to Sally Sullivan, daughter of my son Floyd K. Sullivan, and any other child or children of my said son living at the time of my death, share and share alike or to the survivor or survivors of them, or, in the event no child is then living, then to said Alice E. Sullivan;

One-sixth (1/6) thereof to my sister, Mrs. Mary D. Gillette of Towanda, Pennsylvania, or, if she does not survive distribution, then to my daughter-in-law Alice E. Sullivan and granddaughter Sally Sullivan and any other child or children of my said son Floyd K. Sullivan living at the time of my death, in equal shares, or to the survivor or survivors;

One-sixth (1/6) thereof to my sister-in-law, Mrs. Bell R. Sullivan of 4332 Lyndale Avenue South, Minneapolis, Minnesota, or, if she does not survive distribution, then to my daughter-in-law Alice E. Sullivan and granddaughter Sally Sullivan and any other child or children of my said son Floyd K. Sullivan living at the time of my death, in equal shares, or to the survivor or survivors. [70]

Fifth: All the rest and residue of my estate, if any, I give, devise and bequeath to my surviving issue, if any, and if none, then my heirs at law as determined by the laws of the State of California.

Sixth: I hereby nominate and appoint my son Floyd K. Sullivan as executor of this my Last Will and Testament, to serve as such without bond, provided if my said son shall decline to serve as such executor or is disqualified or incapable of serving

Exhibit 5-E—(Continued)

as such executor, then and in that event I appoint the Security-First National Bank of Los Angeles, California, a national banking association, as executor of this my Last Will and Testament.

I authorize my executor to sell, lease or mortgage the whole or any part of my estate, at either public or private sale, with or without notice, but subject to such confirmation as may be provided by law.

In Witness Whereof I have hereunto set my hand this 30th day of November, 1943.

FRANK K. SULLIVAN.

The foregoing instrument, consisting of three pages, including this one, was on the date thereof by the said Frank K. Sullivan, subscribed, published and declared to be his last will and testament, in the presence of us, who at his [71] request and in his presence, and in the presence of each other, have signed the same as witnesses thereto.

Clyde C. Triplett, residing at Los Angeles, Calif.

Israel Abraham, residing at Los Angeles, Cal.

EXHIBIT 6-F

GRANT DEED

In Consideration of \$1.00, receipt of which is acknowledged, Frank K. Sullivan and Hattie B. Sullivan, his wife, do hereby grant to Frank K. Sullivan the real property in the County of Los Angeles, State of California, described as:

Lot 165 of Tract No. 3535, as per map recorded in Book 107, Pages 1 to 9 inclusive, of Maps, in the office of the County Recorder of said County.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN,

/s/ HATTIE B. SULLIVAN. [73]

State of California,

County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan and Hattie B. Sullivan, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same.

Witness my hand and official seal.

(Seal) VIOLA COLEMAN,

Notary Public in and for said County and State.

My Commission expires Oct. 15, 1947.

Dated November 24, 1943.

Recorded Dec. 6, 1943. In Book 20455. At Page 304 of Official Records, County of Los Angeles, State of California. Mame B. Beatty, County Recorder. [74]

Exhibit 6-F—(Continued)

GRANT DEED

In Consideration of \$1.00, receipt of which is acknowledged, Frank K. Sullivan and Hattie B. Sullivan, his wife, do hereby grant to Frank K. Sullivan, as his separate property, the real property in the County of Los Angeles, State of California, described as follows:

Lot Seventy-four (74) of Tract No. 3535, as per map recorded in Book 107, Page 1, et seq. of Maps, in the office of the County Recorder of said County.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN,

/s/ HATTIE B. SULLIVAN. [75]

State of California,

County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan and Hattie B. Sullivan, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same.

Witness my hand and official seal.

(Seal) VIOLA COLEMAN,

Notary Public in and for said County and State.

My Commission expires Oct. 15, 1947.

Dated November 24, 1943.

Recorded Dec. 6, 1943, in Book 20455, at Page 298 of Official Records, County of Los Angeles, State of California. Mame B. Beatty, County Recorder. [76]

Exhibit 6-F—(Continued)
GRANT DEED

In consideration of \$1.00, receipt of which is acknowledged, Frank K. Sullivan and Hattie B. Sullivan, his wife, do hereby grant to Frank K. Sullivan the real property in the County of Los Angeles, State of California, described as:

Lot Eighty-one (81) of Tract Five Thousand Seventy (5070), Sheets 1 and 2, as per map recorded in Book 57, Pages 53 and 54 of Map Records of said County.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN,

/s/ HATTIE B. SULLIVAN. [77]

State of California,

County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan and Hattie B. Sullivan known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged that they executed the same.

Witness my hand and official seal.

(Seal) VIOLA COLEMAN,

Notary Public in and for said County and State.

My Commission expires October 15, 1947.

Dated November 24, 1943.

Recorded December 6, 1943. In Book 20518. At Page 38 of Official Records, County of Los Angeles, State of California. Mame B. Beatty, County Recorder. [78]

EXHIBIT 7-G
GRANT DEED

In consideration of \$1.00, receipt of which is acknowledged, Frank K. Sullivan does hereby grant to Hattie B. Sullivan, his wife, an undivided one-half interest in the real property in the County of Los Angeles, State of California, described as:

Lot 165 of Tract No. 3535, as per map recorded in Book 107, Pages 1 to 9 inclusive, of Maps, in the office of the County Recorder of said County.

It is the intention of the Grantor to vest title to the above described property in the Grantee as her sole and separate property free and clear from any rights in the Grantor, whether arising out of the marital status of the parties or otherwise.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN. [79]

State of California,
County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same.

Witness my hand and official seal.

(Seal) VIOLA COLEMAN,
Notary Public in and for said County and State.

Dated November 24, 1943.

Recorded Dec. 9, 1943. In Book 30446. At Page 389 of Official Records, County of Los Angeles, State of California. Mame B. Beatty, County Recorder. [80]

Exhibit 7-G—(Continued)

GRANT DEED

In consideration of \$1.00, receipt of which is acknowledged, Frank K. Sullivan does hereby grant to Hattie B. Sullivan, his wife, an undivided one-half interest in the real property in the County of Los Angeles, State of California, described as:

Lot Seventy-four (74) of Tract No. 3535, as per map recorded in Book 107, Page 1, et seq. of Maps, in the office of the County Recorder of said County.

It is the intention of the Grantor to vest title to the above described property in the Grantee as her sole and separate property free and clear from any rights in the Grantor, whether arising out of the marital status of the parties or otherwise.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN. [81]

State of California,

County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same.

Witness my hand and official seal.

(Seal) VIOLA COLEMAN,

Notary Public in and for said County and State.

Dated November 24, 1943.

Recorded Dec. 9, 1943. In Book 20523. At Page 76 of Official Records, County of Los Angeles, State of California. Mame B. Beatty, County Recorder. [82]

Exhibit 7-G—(Continued)

GRANT DEED

In consideration of \$1.00, receipt of which is acknowledged, Frank K. Sullivan does hereby grant to Hattie B. Sullivan, his wife, an undivided one-half interest in the real property in the County of Los Angeles, State of California, described as:

Lot Eighty-one (81) of Tract Five Thousand Seventy (5070), Sheets 1 and 2, as per map recorded in Book 57, Pages 53 and 54 of Map Records of said County.

It is the intention of the Grantor to vest title to the above described property in the Grantee as her sole and separate property free and clear from any rights in the Grantor, whether arising out of the marital status of the parties or otherwise.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN. [83]

State of California,

County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same.

Witness my hand and official seal.

(Seal) VIOLA COLEMAN,

Notary Public in and for said County and State.

Dated November 24, 1943.

Recorded Dec. 9, 1943. In Book 20446. At Page 389 of Official Records, County of Los Angeles, State of California. Mame B. Beatty County Recorder. [84]

EXHIBIT S-H

GRANT DEED

In consideration of \$1.00, receipt of which is acknowledged, Frank K. Sullivan, also known as Frank F. Sullivan, does hereby grant to Hattie B. Sullivan, his wife, an undivided one-half interest in the real property in the County of Los Angeles, State of California, described as: that portion of Lot 31 of the Nadeau Villa Tract, in the County of Los Angeles, State of California, as per map recorded in Book 2, Page 56 of Maps, in the office of the County Recorder of said County, described as follows:

Beginning at the Northeast corner of said Lot 31; thence Westerly along the Northerly line of said Lot, 134.39 feet to a point; thence Southerly parallel with the Easterly line of said lot 34.5 feet; thence Easterly parallel with the Northerly line of said Lot, 134.39 feet to a point in the Easterly line of said Lot; thence Northerly along said Easterly line, 34.5 feet to the point of beginning.

It is the intention of the Grantor to vest title to the above described property in the Grantee as her sole and separate property free and clear from any rights in the Grantor, whether arising out of the marital status of the parties or otherwise.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN,
a/k/a FRANK F. SULLIVAN. [85]

Exhibit 8-H—(Continued)

State of California,
County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan, also known as Frank F. Sullivan, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same.

Witness my hand and official seal.

(Seal) VIOLA COLEMAN,
Notary Public in and for said County and State.

My Commission expires Oct. 15, 1947.

Dated November 24, 1943.

Recorded Dec. 6, 1943. In Book 20511. At Page 100 of Official Records, County of Los Angeles, State of California. Mame B. Beatty, County Recorder. [86]

EXHIBIT 9-I

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned hereby grants, assigns and transfers to Frank K. Sullivan, as his separate property, all beneficial interest under that certain Deed of Trust dated August 18th, 1943, executed by Norman D. Roller and Frieda V. Roller, husband and wife, as joint tenants, Trustors, to Frank K. Sullivan and Hattie B. Sullivan, husband and wife, as joint tenants, Trustees, and rec-

Exhibit 9-I—(Continued)

orded as Instrument No., on September 7, 1943, in Book 20255, Page 231, of Official Records in the Office of the County Recorder of Los Angeles County, California, describing land therein as: Lot 350, McNair Place Tract as per map recorded in Book 22, Page 40 of Maps in the office of the Recorder of said County.

Together with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN,

/s/ HATTIE B. SULLIVAN.

State of California,
County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan and Hattie B. Sullivan, known to me to be the persons whose names are subscribed to the within Instrument, and acknowledged that they executed the same.

Witness my hand and official seal.

(Seal) VIOLA COLEMAN,

Notary Public in and for said County and State.

Dated November 24, 1943.

Recorded Dec. 9, 1943, in Book 20523, at Page 83. of Official Records, County of Los Angeles, State of California. Mame B. Beatty, County Recorder. [88]

Exhibit 9-I—(Continued)

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned hereby grants, assigns and transfers to Frank K. Sullivan as his separate property, all beneficial interest under that certain Deed of Trust dated August 18, 1943, executed by William H. Gass and Beatrice C. Gass, husband and wife, as joint tenants, Trustees, to Frank K. Sullivan and Hattie B. Sullivan, husband and wife, as joint tenants, Trustees, and recorded as Instrument No. , on September 15, 1943, in Book 20199, Page 297, of Official Records in the Office of the County Recorder of Los Angeles County, California, describing land therein as: Lot 14, Block D, Tract 5614, as per map recorded in Book 60, Pages 11 and 12 of Maps in the office of the Recorder of said County.

Together with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN,
/s/ HATTIE B. SULLIVAN.

State of California,
County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan and Hattie B. Sullivan, known to me to be the

Exhibit 9-I—(Continued)

persons whose names are subscribed to the within Instrument, and acknowledged that they executed the same.

Witness my hand and official seal.

(Seal) VIOLA COLEMAN,
Notary Public in and for said County and State.

My Commission expires October 15, 1947.

Dated November 24, 1943.

Recorded Dec. 9, 1943. In Book 20523, at Page 84 of Official Records, County of Los Angeles, State of California. Mae B. Beatty, County Recorder.

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned hereby grants, assigns and transfers to Frank K. Sullivan, as his separate property, all beneficial interest under that certain Deed of Trust dated April 8, 1937, executed by Edwin A. Riesenfeld and Rita K. Riesenfeld, his wife, Trustees, to Frank K. Sullivan and Hattie B. Sullivan, his wife, as joint tenants, Trustees, and recorded as Instrument No. . . . , on April 22, 1937, in Book 14906, Page 195, of Official Records in the Office of the County Recorder of Los Angeles County, California, describing land therein as: Lot 23, Block 16 of Tract No. 4579 in the City of Beverly Hills, as per map recorded in Book 48, pages 72-73 of Maps, in the office of the County Recorder of said County.

Together with the note or notes therein described

Exhibit 9-I—(Continued)

or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN,

/s/ HATTIE B. SULLIVAN.

State of California,

County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan and Hattie B. Sullivan, known to me to be the persons whose names are subscribed to the within Instrument, and acknowledged that they executed the same.

Witness my hand and official seal.

(Seal) VIOLA COLEMAN,

Notary Public in and for said County and State.

My Commission expires October 15, 1947. [91]

Dated November 24, 1943.

Recorded Dec. 9, 1943. In Book 20527. At Page 29 of Official Records, County of Los Angeles, State of California. Mame B. Beatty, County Recorder. [92]

Exhibit 9-I—(Continued)

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned hereby grants, assigns and transfers to Frank K. Sullivan, as his separate property, all beneficial interest under that certain Deed of Trust dated May 22nd, 1940, executed by Abbie C. Shanks, a widow, Trustor, to Frank K. Sullivan and Hattie B. Sullivan, husband and wife, as joint tenants, Trustees, and recorded as Instrument No. , on May 27, 1940, in Book 17577, Page 9, of Official Records in the Office of the County Recorder of Los Angeles County, California, describing land therein as: Lot 37 of Tract 8109, as per map recorded in Book 182, Pages 33-35 of Maps, in the office of the County Recorder of said County.

Together with the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN,
/s/ HATTIE B. SULLIVAN.

State of California,
County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan and Hattie B. Sullivan, known to me to be the persons whose names are subscribed to the within

Exhibit 9-I—(Continued)

Instrument, and acknowledged that they executed the same.

Witness my hand and official seal.

(Seal) VIOLA COLEMAN,
Notary Public in and for said County and State.

My Commission expires October 15, 1947. [93]

Dated November 24, 1943.

Recorded Dec. 9, 1943. In Book 20471. At Page 254, of Official Records, County of Los Angeles, State of California. Name B. Beatty, County Recorder. [94]

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned hereby grants, assigns and transfers to Frank K. Sullivan, as his separate property, all beneficial interest under that certain Deed of Trust dated August 30th, 1943, executed by Anthony E. Gorman and Katherine Gorman, husband and wife, as joint tenants, Trustors, to Frank K. Sullivan and Hattie B. Sullivan, husband and wife, as joint tenants, Trustees, and recorded as Instrument No. , on September 24, 1943, in Book 20079, Page 311, of Official Records in the Office of the County Recorder of Los Angeles County, California, describing land therein as: Lot 19, Tract 1718, as per map recorded in Book 20, Page 84 of Maps, in the office of the County Recorder of said County.

Together with the note or notes therein described

Exhibit 9-I—(Continued)

or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN,
/s/ HATTIE B. SULLIVAN.

State of California,
County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan and Hattie B. Sullivan, known to me to be the persons whose names are subscribed to the within Instrument, and acknowledged that they executed the same.

Witness my hand and official seal.

(Seal) VIOLA COLEMAN,
Notary Public in and for said County and State.

My Commission expires October 15, 1947. [95]

Dated November 24, 1943.

Recorded Dec. 9, 1943. In Book 20527. At Page 28, of Official Records, County of Los Angeles, State of California. Mame B. Beatty, County Recorder. [96]

EXHIBIT 10-J

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned hereby grants, assigns and transfers to Hattie B. Sullivan, his wife, as her separate property, an undivided one-half interest in all beneficial interest under that certain Deed of Trust dated August 18th, 1943, executed by Norman D. Roller and Frieda V. Roller, husband and wife, as joint tenants, Trustors, to Frank K. Sullivan and Hattie B. Sullivan, husband and wife, as joint tenants, Trustees, and recorded as Instrument No., on September 7, 1943, in Book 20255, Page 231, of Official Records in the Office of the County Recorder of Los Angeles County, California, describing land therein as: Lot 350, McNair Place Tract as per map recorded in Book 22, Page 40 of Maps in the office of the Recorder of said County.

Together with an undivided one-half interest in the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN.

State of California,
County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan,

Exhibit 10-J—(Continued)

known to me to be the person whose name is subscribed to the within Instrument, and acknowledged that he executed the same.

Witness my hand and official seal.

(Seal) VIOLA COLEMAN,
Notary Public in and for said County and State.

My Commission expires October 15, 1947. [97]

Dated November 24, 1943.

Recorded Dec. 14, 1943. In Book 20521. At Page 128, of Official Records, County of Los Angeles, State of California. Mame B. Beatty, County Recorder. [98]

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned hereby grants, assigns and transfers to Hattie B. Sullivan, his wife, as her separate property, an undivided one-half interest in all beneficial interest under that certain Deed of Trust dated August 18, 1943, executed by William H. Gass and Beatrice C. Gass, husband and wife, as joint tenants, Trustors, to Frank K. Sullivan and Hattie B. Sullivan, husband and wife, as joint tenants, Trustees, and recorded as Instrument No. , on September 15, 1943, in Book 20199, Page 297, of Official Records in the Office of the County Recorder of Los Angeles County, California, describing land therein as: Lot 14, Block D, Tract 5614, as per map recorded in Book 60, Pages 11 and 12 of Maps in the office of the Recorder of said County.

Exhibit 10-J—(Continued)

Together with an undivided one-half interest in the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN.

State of California,
County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan, known to me to be the person whose name is subscribed to the within Instrument, and acknowledged that he executed the same.

Witness my hand and official seal.

(Seal) VIOLA COLEMAN,
Notary Public in and for said County and State.

My Commission expires October 15, 1947. [99]

Dated November 24, 1943.

Recorded Dec. 14, 1943. In Book 20458. At Page 370, of Official Records, County of Los Angeles, State of California. Name B. Beatty, County Recorder. [100]

Exhibit 10-J—(Continued)

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned hereby grants, assigns and transfers to Hattie B. Sullivan, his wife, as her separate property, an undivided one-half interest in all beneficial interest under that certain Deed of Trust dated April 8, 1937, executed by Edwin A. Riesenfeld and Rita K. Riesenfeld, his wife, Trustees, to Frank K. Sullivan and Hattie B. Sullivan, his wife, as joint tenants, Trustees, and recorded as Instrument No., on April 22, 1937, in Book 14906, Page 195, of Official Records in the Office of the County Recorder of Los Angeles County, California, describing land therein as: Lot 23, Block 16 of Tract No. 4579 in the City of Beverly Hills, as per map recorded in Book 48, pages 72-73 of Maps, in the office of the County Recorder of said County.

Together with an undivided one-half interest in the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN.

State of California,
County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan,

Exhibit 10-J—(Continued)

known to me to be the person whose name is subscribed to the within Instrument, and acknowledged that he executed the same.

Witness my hand and official seal.

(Seal) VIOLA COLEMAN,
Notary Public in and for said County and State.

My Commission expires October 15, 1947. [101]

Dated November 24, 1943.

Recorded Dec. 14, 1943. In Book 20521. At Page 135, of Official Records, County of Los Angeles, State of California. Mame B. Beatty, County Recorder. [102]

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned hereby grants, assigns and transfers to Hattie B. Sullivan, his wife, as her separate property, an undivided one-half interest in all beneficial interest under that certain Deed of Trust dated May 22nd, 1940, executed by Abbie C. Shanks, a widow, Trustor, to Frank K. Sullivan and Hattie B. Sullivan, husband and wife, as joint tenants, Trustees, and recorded as Instrument No., on May 27, 1940, in Book 17577, Page 9, of Official Records in the Office of the County Recorder of Los Angeles County, California, describing land therein as: Lot 37 of Tract 8109, as per map recorded in Book 182, Pages 33-35 of Maps, in the office of the County Recorder of said County.

Exhibit 10-J—(Continued)

Together with an undivided one-half interest in the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN.

State of California.

County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan, known to me to be the person whose name is subscribed to the within Instrument, and acknowledged that he executed the same.

Witness my hand and official seal.

(Seal) VIOLA COLEMAN,
Notary Public in and for said County and State.

My Commission expires October 15, 1947. [103]

Dated November 24, 1943.

Recorded Dec. 14, 1943. In Book 20458. At Page 369, of Official Records, County of Los Angeles, State of California. Name B. Beatty, County Recorder. [104]

Exhibit 10-J—(Continued)

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned hereby grants, assigns and transfers to Hattie B. Sullivan, his wife, as her separate property, an undivided one-half interest in all beneficial interest under that certain Deed of Trust dated August 30th, 1943, executed by Anthony E. Gorman and Katherine Gorman, husband and wife, as joint tenants, Trustees, to Frank K. Sullivan and Hattie B. Sullivan, husband and wife, as joint tenants, Trustees, and recorded as Instrument No. . . , September 24, 1943, in Book 20079, Page 311, of Official Records in the Office of the County Recorder of Los Angeles County, California, describing land therein as: Lot 19, Tract 1718, as per map recorded in Book 20, Page 84 of Maps, in the office of the County Recorder of said County.

Together with an undivided one-half interest in the note or notes therein described or referred to, the money due and to become due thereon with interest, and all rights accrued or to accrue under said Deed of Trust.

Dated this 24th day of November, 1943.

/s/ FRANK K. SULLIVAN.

State of California,
County of Los Angeles—ss.

On this 24th day of November, 1943, before me, Viola Coleman, a Notary Public in and for said County, personally appeared Frank K. Sullivan,

Exhibit 10-J—(Continued)

known to me to be the person whose name is subscribed to the within Instrument, and acknowledged that he executed the same.

Witness my hand and official seal.

(Seal) **VIOLA COLEMAN,**

Notary Public in and for said County and State.

My Commission expires October 15, 1947. [105]

Dated November 24, 1943.

Recorded Dec. 14, 1943. In Book 20447. At Page 322, of Official Records, County of Los Angeles, State of California. Mame B. Beatty, County Recorder. [106]

[Endorsed]: T.C.U.S. Filed Dec. 2, 1947.

[Title of Tax Court and Cause.]

10 T. C. No. 124

The Tax Court of the United States
ESTATE OF FRANK K. SULLIVAN, deceased,
by FLOYD K. SULLIVAN, executor,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 12476—Promulgated May 27, 1948.

1. Held on the facts that division of the joint estate of decedent and wife into tenancy in com-

mon and transfer to their son, was in contemplation of death.

2. The division of joint estate into tenancy in common held not bona fide sale for adequate and full consideration in money or money's worth, within section 811 (c), Internal Revenue Code.

3. Held, further, that the properties transferred originally belonged to the decedent and not to his wife, within section 811 (e) (1), Internal Revenue Code; also that a withdrawal of money by the wife from a joint bank account shortly before decedent's death did not remove the amount from his estate.

Philip C. Jones, Esq., and Albert Mosher, Esq., for the petitioner.

Douglas L. Barnes, Esq., for the respondent.

This proceeding involves a deficiency of \$18,-963.17 in estate tax. The issue is whether certain property, consisting of United States Savings Bonds and other securities, real estate and the amount of a check, is includable in the gross estate of the decedent. The facts set forth in a stipulation are so found, and will be included in the findings of fact made from other evidences.

FINDINGS OF FACT

The petitioner is the estate of Frank K. Sullivan, who died testate on January 9, 1944, a resident of California. His son, Floyd K. Sullivan, was executor; and was discharged as executor on June 4, 1945. The estate tax return for the estate of the

decedent, disclosing no tax liability, was filed with the collector for the sixth district of California. The decedent was born April 6, 1866, and was 77 years of age at the time of his death. He and Hattie B. Sullivan, who was born in 1867, were married in Minneapolis, Minnesota, in 1892, and remained husband and wife until the death of the decedent.

The decedent was the sole owner of a coal business in Minneapolis for many years prior to 1918, in which year he sold the business for \$100,000. He invested the proceeds in California in income-producing property, including apartment houses, mortgages and trust deeds prior to and after 1922, when he and his wife moved to California and thereafter until their respective deaths they continuously resided and were domiciled in California. During his residence in California, the decedent was not employed and did not engage in any business other than to look after his investments. [110]

In 1930 the decedent purchased a lot in Beverly Hills, California, and, after improving it with a house, gave the property to Floyd K. Sullivan, his only son, and the son's wife. In 1931 Floyd K. Sullivan became a member of a partnership to engage in the general brokerage business, without an investment. The decedent deposited securities of a value of about \$25,000 with a bank for use by the partnership as collateral in connection with sales and purchases. The partners sustained losses in the operation of the business. About 1933 Floyd K. Sullivan and his wife borrowed \$7,500 secured by

a mortgage on the property they had acquired by gift from the decedent. The money was borrowed to pay household expenses and deficits incurred in the operation of the brokerage business. The firm was dissolved in August 1934. The loss of Floyd K. Sullivan was about \$12,000, in settlement of which he and his wife conveyed to the decedent and his wife a duplex house of a value of about \$7,500, which had been inherited by Floyd's wife.

In 1943 Floyd K. Sullivan was 44 years of age, married and had one child, a daughter 13 years old. He still owned the home acquired by gift from his father, subject to a mortgage of about \$7,500, on which he had been making payments for ten years. In 1943 he was employed by Nelson Douglass & Co., a securities brokerage firm in Los Angeles. His earnings in 1940 were \$3,425; 1941, \$2,768; 1942, \$4,481 and 1943, \$5,221.

In 1943 the decedent and his wife informed their son of their desire to make a gift to him to make payments under a mortgage on his home and to make it easier for him to meet his other obligations. He suggested that they consult Clyde C. Triplett, an attorney in Los Angeles, specializing in tax matters, which they, accompanied by their son, did, on September 27, 1943, for the purpose of [111] ascertaining the rate of taxation on gifts. They informed the attorney that all of their property was owned as joint tenants and that they had in mind a gift of about \$33,000 to augment their son's income. The decedent also informed Triplett that he had made his money in the coal business in Minneapolis

and in response to a question of Triplett said that he was worth less at that time than when he came to California. Counsel advised them to prepare a list of the property they owned and select therefrom the property for gift to their son. During the meeting the decedent and Triplett discussed golf at some length, during the course of which decedent informed him that he played to improve his game.

A list of the property held by the decedent and his wife was furnished Triplett in accordance with his request. Counsel then suggested that the securities be delivered to him. Some of the securities were turned over to Triplett by the decedent and his wife about the middle of October 1943, when the decedent informed Triplett that the other documents would be delivered as soon as he could locate them, and that he and his wife had not decided upon the items of property for gift to their son.

The decedent and his wife made an appointment to consult Triplett on November 9, 1943, and during the course of the meeting on that date they informed him of the securities they had decided to give to their son. At that time they left with Triplett the remainder of their evidence of ownership of property, and it was ascertained that one parcel of real property was not held in joint tenancy. Triplett informed the decedent at the meeting that it was not a good idea for him to hold his property as a joint tenant, that their property was not and never had been community property, and that upon the death of one joint [112] tenant, the property passed to the survivor and was includable in the

gross estate of the decedent. He told them that it was advisable to terminate the joint tenancies and divide the property between them as tenants in common or divide in kind such property as could be so divided, and expressed the opinion that the transaction would be a non-taxable exchange, that the tax saving would not be very much, that it would involve additional probate expenses, and that thereafter one-half of the property would be in the wife's estate. Thereafter the decedent informed Triplett that he and his wife thought that his advice was sound and requested him to prepare the necessary legal documents to convert title to the property into tenancies in common.

Triplett requested Floyd K. Sullivan to prepare a letter addressed to Nelson Douglass & Co., directing it to transfer from the account of the decedent and his wife into the name of Floyd K. Sullivan the securities the parents had decided to give to their son, and to state therein that the securities were being transferred as a gift. Such a letter, being the date November 19, 1943, was prepared and signed by the petitioner and his wife. The twelve securities listed in the letter for transfer as a gift had a market value on January 9, 1944, of \$33,526.54. Six of the securities, market value \$12,340.63, were in the name of the decedent, and the remainder, except bearer form bonds of the Gulf, Mobile and Ohio Railway Co., having a market value on January 9, 1944, of \$10,077.78, including interest of \$77.78, and which were in the possession of the decedent and his wife, were in his and his wife's name. Forty

units of Southwestern Freight Lines stock, which were included in the transfer, were in the form of nonnegotiable escrow receipts, issued in connection with a voting trust. All the securities were received by the broker on November 16, 1943, [113] except the bearer form bonds, which it received on December 14, 1943, for the account of Floyd K. Sullivan. The stock certificates were reissued in November or December 1943 in the name of Floyd K. Sullivan, except 40 units of Southwestern Freight Lines stock, which were reissued in his and his wife's name as joint tenants on March 15, 1944, when the transfers could be made. No part of the value of the securities transferred to the son was included in the gross estate of decedent by the executor. The entire value was included in gross estate by respondent in his determination of the deficiency.

The decedent was very rugged and active, and was in good physical condition for a man of his age. He played golf with his son about every week and did not complain to him about the condition of his health prior to the middle of November 1943. He had no serious illness prior to his fatal illness. He was a heavy smoker of cigars and never spoke of his ailments, if he had any.

The decedent was examined by Dr. Julius Kahn on November 18, 1943. He informed the physician that he had felt quite well until three weeks before that time and complained about jaundice he had noticed two or three days previously, loss of 15 pounds of weight during the previous year, 8 to 10 pounds of which was during the past two months,

and an abdominal pain that began four or five days previously but left after a few days. The decedent was admitted to a hospital on November 21, 1943, for further examination and remained there for three days, when he was sent home to return later for completion of work. The diagnosis of Dr. Kahn from examinations made in the hospital was obstructive jaundice, probable cancer of the pancreas. Dr. Kahn discharged the decedent as a surgical case. The decedent's wife was not informed of the diagnosis made by Dr. Kahn. [114]

On November 24, 1943, a short time before the decedent left the hospital, his son inquired of Triplett by phone from the hospital whether he had prepared documents for the transfer of property of his parents, and upon being informed that they were ready for signature, requested that Triplett take the papers to the Bonnie Lee Apartments, which was owned by a corporation of which the decedent was president and principal stockholder (but in which the decedent did not reside), for execution. Triplett complied with the request. Among the legal documents executed and delivered at that time was a contract between the decedent and his wife.

The contract executed by the decedent and his wife on November 24, 1941, recites that substantially all of their property was held as joint tenants and that they desired to terminate such ownership and divide the property so that each would own as his or her separate property, free of claims of the other, approximately one-half thereof. The contract

then provided, with recited assignments to make it effective, that on and after the date it bore the real and personal property owned by them, whether held as joint tenants or in his or her own name, would be owned by them by undivided one-half interests as separate property. Some of the property was specifically referred to as covered by the agreement and consisted of (1) four parcels of real estate; (2) five promissory notes, secured by trust deeds; (3) \$50,-000 face amount of U. S. Savings Bonds, Series 'G'; (4) bonds of the Chicago City Railway of a face value \$4,000; (5) three blocks of corporate stock, including stock of the Union Trusteed Funds, Inc. The agreement also covered furniture, fixtures and household goods. [115]

Deeds and assignments were executed on the same day to convey and transfer the real property and notes. The deeds were recorded on December 6, 1943, or December 9, 1943. The agreement provided for registration of the corporate bonds and the reissuance of the stock in the names of the respective transferors, one-half in each. On account of an oversight on the part of Floyd K. Sullivan, no transfer of record was made of Chicago City Railway bonds or stock of the Union Trusteed Funds, Inc., until after the death of the decedent when transfers were effected in accordance with the decree of distribution and the agreement of November 24, 1943, by issuing the securities to the decedent's wife, one-half as life tenant. The decedent and his wife had surrendered their stock in connection with dissolution proceedings of the other two corpora-

tions, and no transfer of record of the stock was made. Upon the liquidation of the corporations, one-half of the liquidating dividend was paid to the estate of decedent and the other half to decedent's wife, in accordance with the agreement of November 24, 1943. The division of the property on November 24, 1943, was the result of suggestions made by Triplett.

Prior to the execution of the agreement of November 24, 1943, all of the real estate, except one parcel which was held in the name of the decedent, notes, bonds, stocks and furniture and fixtures was held in joint tenancy by the decedent and his wife. The registered ownership of the Savings Bonds was not subject to transfer and at all times prior to the death of decedent was held in the joint names of decedent or his wife. After the death of the decedent the Savings Bonds were redeemed and one-half of the proceeds and accrued interest was retained by petitioner and the remainder paid to the survivor.

One-half of the value of the real estate, notes, bonds and stock and furniture, fixtures and household goods, was included in the gross estate of decedent by the executor. In his determination of the deficiency the respondent included the other half of the value of the property in gross estate, the agreed value for such interests being \$25,013.80 for the Savings Bonds and \$35,348.75 for the other assets.

After the various documents were executed on November 24, 1943, Triplett suggested to the decedent and his wife that they permit him to examine their wills under which each left his or her property

to the other. He expressed to them the opinion that their wills should each leave a life estate in their property to the survivor with the remainder over to their son, as such a plan might avoid a subsequent probate proceeding, and tax expense. The decedent did not like the idea, saying that if his wife predeceased him, he could look after his own affairs. On that date the decedent informed Triplett that the doctors thought he had something wrong with his gall bladder but he thought they did not know "what they were talking about."

New wills were drafted by Triplett for the decedent and his wife and were executed on November 30, 1943. The will of decedent left all of his property to his wife for life, with a remainder interest to his son. In the event his wife predeceased him, all of his property was to go to his son. Provision was also made for the disposition of his property in the event both his wife and son predeceased him. The will of decedent's wife did not contain a provision to give the decedent a life estate in her property. [117]

On December 20, 1943, decedent's wife drew a check for \$2,400 on a bank account in her and decedent's joint names and thereafter deposited it in a separate account in her name in another bank. No part of the amount of the check was included in the gross estate by the executor. All of the amount of the check was included in gross estate by the respondent.

Floyd K. Sullivan did not know that his father had been discharged from the Cedars of Lebanon

Hospital with a recommendation of surgery. On about December 6, 1943, he took his father to Dr. H. G. McNeil for further examination and treatment. The physician prescribed hot packs for the abdominal region. On about December 15, 1943, the physician decided that an operation was necessary and the decedent was admitted to a hospital on December 16, 1943, for an operation for carcinoma of the pancreas. An operation performed on December 20, 1943, confirmed the preoperative diagnosis. A second operation was performed on January 3, 1944, in connection with the same ailment. Thereafter Dr. McNeil, for the first time, informed Floyd K. Sullivan and his mother that the decedent had cancer of the pancreas. The decedent died in the hospital on January 9, 1944. The death certificate gives carcinoma of the pancreas as the immediate cause of death.

Pursuant to a court decree, a life interest in the estate of the decedent was distributed to his widow and the remainder interest to his son. The widow died December 18, 1946, and all of the assets of the decedent's estate are now vested in the son under the terms of the decedent's will.

The transfers made on November 19, 1943, and November 24, 1943, were made in contemplation of death and the latter was not a bona fide sale for an adequate and full consideration in money or money's worth. [118]

OPINION

Disney, Judge: In his determination of the deficiency the respondent included the value of the property involved in the gift to the son on November 19, 1943, and in the agreement of November 24, 1943, between the decedent and his wife in decedent's gross estate as transfers made in contemplation of death. The notice of deficiency also recited that one-half of the value of the United States Saving Bonds, amount \$25,013.80, including interest, which was not included in the estate tax return by petitioner, was included in the gross estate under the provisions of section 811 (e) of the Code.

The contentions of the petitioner are, in substance, that the transfers were not made in contemplation of death; that the property transferred to the son was held as joint tenants and, accordingly, if the transfer was made in contemplation of death, only one-half of the value thereof is includable in gross estate under section 811 (e); that the remaining property was held, at death, as tenants in common, pursuant to the provisions of the agreement executed on November 24, 1943, with the result that only one-half of the value thereof is subject to tax, and that if the transfer was made in contemplation of death, it was made for an adequate and full consideration in money or money's worth. The parties have agreed upon the value of the property involved in the transfers.

The primary question is whether the transfers

were made in contemplation of death. Aside from the statutory presumption raised by section 811 (c), which petitioner asserts for specified reasons is not applicable, the petitioner had the burden of showing the respondent's action to be erroneous.

Contemplation of Death Gift to Son.

Concerning the transfers on November 19, 1943, the petitioner contends that the dominant motive was associated with life, rather than death, and, accordingly, they fall without the statute. The motive relied upon was a desire to supplement the property of the donee in order to give him, during the donor's lifetime, income to meet financial obligations.

The evidence contains no record of unusual generosity on the part of decedent towards his son, his only child, particularly in view of his financial standing. He had \$100,000 in cash when he took up a domicile in California in 1922, and his son was 23 years old. In 1930, the year of birth of decedent's granddaughter, the decedent had a house built on a lot and gave it to his son. The value of the gift is not shown. The next year the son entered the brokerage business with a partner. Such financial assistance as decedent gave his son in the new venture consisted of a loan of securities for use by the firm as collateral. Upon the dissolution of the firm in 1934, the son and his wife conveyed to his parents, in settlement of a debt of about \$12,000, a house of a value of about \$7,500, which the son's wife had inherited. The loan and its partial repay-

ment by the means taken are opposed to the idea that the decedent had a desire at that time to share his wealth with his son for purposes associated with his own life. Without more facts on the point, we can not infer that the decedent intended the difference between the value of the property conveyed and the amount of the indebtedness to him, as a gift to his son. [120]

There is no evidence of other gifts or financial assistance of any kind to the son, despite operation losses in the brokerage business, until the transfers in issue. The donee testified that his parents informed him that they desired to make the transfers to help him meet his financial obligations. Later, in September 1943, decedent's wife informed counsel being consulted concerning the matter, that the purpose of the gift was to provide their son with additional income. It does not appear that his need for financial help at that time differed substantially from prior years. In fact, his earnings in 1943 were \$740 in excess of income the previous year and almost double his earnings for 1941.

From this whole record we are constrained to believe that the decedent was inclined to deal with his son on a business basis, until shortly before his death. Certainly the conveyance to him, of the property inherited by his daughter-in-law, about 1934, when the son was rather apparently in worse financial condition than in 1943, was a cold business matter.

The amount involved here was not small. The

property had a value on January 9, 1944, of \$33,526.54, which is about 20 per cent of decedent's gross estate as returned by petitioner and adjusted by the respondent. The transfer of such a proportion of the total wealth of the decedent, under all the circumstances here, indicates a purpose associated with death instead of life. [121]

Transfers November 24, 1943.

Petitioner contends that these transfers merely severed joint tenancies and created tenancies in common and, therefore, were not made in contemplation of death. The transaction had its inception in advice given the transferors by counsel on November 9, 1943, that it was against their interests to hold property as joint tenants, and, in effect, that if the property were held as tenants in common, there would be less value of property for inclusion in gross estate upon the death of the decedent. The action taken manifests a desire of decedent to so arrange all of his property interests as to reduce death taxes. It seems to have been the controlling motive and had a direct relation with what would happen to his property upon death. It has been held under similar circumstances that the transfers were made in contemplation of death. *First Trust & Deposit Co. v. Shaughnessy*, 134 Fed. (2d) 940; *Commonwealth Trust Co. of Pittsburgh v. Driscoll*, 50 Fed. Supp. 949, affirmed 137 Fed. (2d) 653; *Vanderlip v. Commissioner*, 155 Fed. (2d) 152, affirming 3 T. C. 358. In *Allen v. Trust Co. of Georgia*, 326 U. S. 630, the Court said, with

respect to the leading case, United States v. Wells, 283 U. S. 102, that "the statute is satisfied, it is said, where for any reason the decedent becomes concerned about what will happen to his property at his death and as a result takes action to control or in some manner affect its devolution."

The decedent enjoyed good health for a man of his age until the development of a cancer at a time not disclosed by the record. He started to lose weight a year before the transfers and lost from eight to ten pounds during a period of two months before November 18, 1943, on which date he consulted a physician for the first time about the condition of his health. At that time he had not felt [122] well for about three weeks and had had jaundice for two or three days. Whether the consultation occurred after or before he requested counsel to draft documents for the transfers does not appear in the evidence and we may not assume that the request preceded the visit to the doctor. In any event, the transfer papers had not been executed and the decedent signed them at the earliest possible time after his discharge, on November 24, 1943, from confinement in a hospital for three days for a more complete examination of his physical condition.

The experience the decedent was undergoing was unusual for him and constituted logical grounds for becoming apprehensive about its outcome, particularly in view of his age and past good health. The cancerous condition then existing caused his

death less than two months later. It does not appear from the evidence whether he knew he had a cancer.

Further discussion of the point would serve no useful purpose. Our conclusion is that the petitioner has failed to establish error in the action of respondent in treating the transfers, both to his son and to his wife by severance of joint tenancy, as having been made in contemplation of death.

Consideration for Transfers on November 24, 1943.

Section 811 (c) of the Code excludes from its general provisions, transfers made in "a bona fide sale for an adequate and full consideration in money or money's worth." Is the transaction here involved to be therefore excepted, though found to be in contemplation of death? We do not, in the first place, find here the characteristics of a bona fide sale in the transaction. The transfers, as already pointed out, had their inception in a desire, obviously mutual, [123] to lessen death duties while contemplating death. No bargaining at arms' length, or otherwise, appears. The petitioner concedes that the interest of the survivor was acquired by her in the first instance by a gift from the decedent. Neither does it appear that either party gave any thought to whether he or she was receiving value, adequate or inadequate, for property interests transferred. The nature of the transaction and its purpose was one that did not contemplate anything more than reciprocal transfers without regard to consideration of any kind. It was simply a family arrangement for the protection

of their estates, as they regarded them. *Phillips v. Gnichtel*, 27 Fed. (2d) 662; *Giannini v. Commissioner*, 148 Fed. (2d) 285.

Moreover, the division of the joint property into interests in common was not sale, in the ordinary sense in which we think the statute used the term. The word "sell"—in its ordinary sense means a transfer of property for a fixed price in money or its equivalent. *United States v. Benedict*, 280 Fed. 76, 80, quoted in *Hale v. Helvering*, 85 Fed. (2d) 819. No price was fixed here. It will be noted that section 811 (c) does not include "exchange"; and the most that could be said of the division of the joint estates would be that it was in a sense exchange. Nor was the transaction for the necessary consideration. Assuming that the division of interests had such reciprocity as to constitute a good consideration between the parties, we think it was not the adequate and full consideration in money or money's worth intended by the statute. A sale for full adequate consideration in money or its worth would not diminish the estate of the transferor, but leave it in effect the same as before, therefore, such a sale would be unobjectionable to the estate tax law. [124]

In *Latty v. Commissioner*, 62 Fed. (2d) 952, "in money or money's worth" is held to indicate, under section 303 of the Revenue Act of 1924, as to claims against estates, "a consideration, which at the time either augmented the estate of the decedent, granted to him some right or privilege he

did not possess before, or operated to discharge a then existing claim * * *. * * A 'sale' implies the receipt 'of money or money's worth' as the purchase price of that conveyed—the continued maintenance of the estate of the vendor at approximately its pre-existing value. A testamentary disposition is in the nature of a bounty and the antithesis of a sale * * *." In *Commissioner v. Porter*, 92 Fed. (2d) 426, construing section 303 (a) (1) of the Revenue Act of 1926 as to claims, it is held that "adequate and full consideration in money or money's worth" was "to prevent a man from diminishing his taxable estate by creating obligations not meant correspondingly to increase it but intended as gifts or a means of distributing it after his death. * * *" In *Helvering v. Robinette*, 129 Fed. (2d) 832, an exchange of promises relative to testamentary disposition was held not to be adequate and full consideration in money or money's worth within the law of gift tax. Here it seems clear that for estate tax purposes the decedent's estate was diminished, for he surrendered for the purposes of estate tax law more than he received, because, as the parties have stipulated that in the absence of the transfer here involved, the entire joint estate would be taxable under the provisions of section 811 (e), whereas, under the transfer or agreement made he received only a half interest, by tenancy in common, and therefore only that amount would be taxable estate. The situation is in some respects similar to that in *Phillips v. Gнич-*

tel, supra, where it was pointed out that the decedent husband had transferred to his wife, in contemplation of death as here, more than he received from [125] her and that such was not a sale for "fair consideration in money or money's worth" within sections 301 and 302 (c) of the Revenue Act of 1924. The arrangement was held "to savor more of testamentary disposition than of bargain and sale such as the statute contemplates in relieving a decedent's estate from taxation." In our view the transaction between the decedent and his wife in this matter did not comprise bona fide sale for full and adequate consideration in money or money's worth within section 811 (c), therefore may not be excepted from transfers taxable because in contemplation of death.

Interest of Decedent in Property Transferred.

Concerning the transfers to the son, petitioner argues that all of the property involved was, in accordance with local law, held as joint tenants, the securities standing in decedent's name alone being such property by reason of investment and reinvestment of like property; therefore, only one-half of the gift was made by the decedent. It is argued that the agreement of November 24, 1943, converted all of their remaining jointly held property into tenancies in common, including the real estate held in decedent's name, and as title was so held by them at decedent's death, no more than one-half of the value of the property is includable in gross estate.

The application of Federal taxing statutes to property interests is not always determined by local law, the statutory provisions governing the question here, not being dependent upon local law. *Tyler v. United States*, 281 U. S. 497; *United States v. Pelzer*, 312 U. S. 399; *Fernandez v. Weiner*, 326 U. S. 340. [126]

In *Commonwealth Trust Co. of Pittsburgh v. Driscoll*, 50 Fed. Supp. 249, affirmed per curiam, 137 Fed. (2d) 563, the decedent conveyed two parcels of real property, title to which was in his name, to himself and his wife as tenants by the entirety. Later they conveyed the properties to the wife alone. The Court held that the transfers to the wife alone were made in contemplation of death and the value thereof was includable in the decedent's estate, he having purchased the properties with his own funds.

In *Estate of William Macpherson Hornor*, 44 B.T.A. 1136, the decedent conveyed property to himself and wife as tenants by the entirety. The wife had not contributed anything towards the cost and paid nothing in connection with the conveyance to the entirety. Later they conveyed the property to themselves and another as trustees, with a right to receive the income therefrom during their joint lives and the life of the survivor and subject to a joint power of revocation and withdrawal of the trust estate during their joint lives. Later, other property was conveyed to the trust. We held that the property in trust was includable in gross estate

under section 302 (c) of the Revenue Act of 1926, as a transfer in contemplation of death and section 302 (e) on the ground that the trust was ineffective to avoid the provision thereof. On appeal, the court found it unnecessary to decide whether any transfer was made in contemplation of death and held that the transfer was within section 302 (e).

Section 811 (c) taxes at death the value at that time of the property previously transferred in contemplation, as here, of the event. *Inglehart v. Commissioner*, 77 Fed. (2d) 704, in which the Court said:

* * * For the purposes of the tax, property transferred by the decedent in contemplation of death is in the same category as it would have been if the transfer had not been made and the transferred property had continued to be owned by the decedent up to the time of his death * * *. [127]

To the same effect is *In re Kroger's Estate*, 145 Fed. (2d) 901; *Estate of Nathalie Koussenitsky*, 5 T. C. 650 (660) and *Estate of William Macpherson Horner*, *supra*. If we ignore the transfers on the two dates in November 1943, we find decedent holding at death, property in his own name and property as joint tenant with his wife.

Section 811 (e) (1) provides for inclusion in gross estate of the value of property held as joint tenants by the decedent and any other persons "except such part thereof as may be shown to have

originally belonged to such other person and never to have been received or acquired by the latter from the decedent for less than an adequate and full consideration in money or money's worth; * * *."

The intent of section 811 (e) (1) is to include the full value of joint tenancy property in gross estate to the extent that it or the consideration therefor is traceable to the decedent. *Foster v. Commissioner*, 90 Fed. (2d) 486, affirmed per curiam 303 U. S. 618; *United States v. Jacobs*, 306 U. S. 363; *Estate of Joseph A. Brudermann*, 10 T. C. No. 73 (March 30, 1948). •

Aside from the concession of petitioner that the surviving tenant acquired his interest by gift from decedent, nothing herein is contrary to the view that the original source of all of the property was the proceeds of the sale, by decedent, of his wholly owned business in 1918. None of the property or consideration therefor is shown by petitioner to have been contributed by the wife. Gifts made by a decedent and subsequently contributed by the donee to the joint tenancy with the donor, do not serve to remove any of the interest taxable to the decedent. *Dimroch v. Corwin*, 306 U. S. 363. Petitioner has failed in his proof that the decedent did not supply all of the property and the consideration therefor. [128]

The parties have stipulated that if the decedent had died immediately prior to the execution of the agreement of November 24, 1943, and the making of the gift, all of the property, except that in the name

of decedent alone, would have been includable in the gross estate of decedent under section 811 (e) (1) of the Code, and that the property standing in his name alone would have been includable in his gross estate under section 811 (e) (1), or 811 (a) of the Code. The transfers did not, under the circumstances here, serve to make the situation any different from what it would have been if the decedent had died immediately before making the gift to his son and executing the agreement on November 24, 1943, with his wife. Neither did the withdrawal by decedent's wife from a joint bank account on December 20, 1943, of \$2,400, and subsequent deposit of the amount in her name in another bank, operate to avoid tax on the amount as part of the gross estate of decedent. Estate of Harold W. Grant, 1 T. C. 731. See Estate of Henry Wilson, 2 T. C. 1059. Never having contributed any of the joint property or consideration, the surviving tenant may not be treated under section 711 (e) as the owner of any interest in the property.

Accordingly, we find no error in the respondent's determination with respect to the transfers in question.

Reviewed by the Court.

Decision will be entered for the respondent.

The Tax Court of the United States,
Washington.

Docket No. 12476.

ESTATE OF FRANK K. SULLIVAN, deceased,
By FLOYD K. SULLIVAN, Executor,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION.

Pursuant to the determination of the Court, as set forth in its Findings of Fact and Opinion, promulgated May 27, 1948, it is

Ordered and decided: That there is a deficiency of \$18,963.17 in estate tax.

(Seal) /s/ R. L. DISNEY,
Judge.

Enter: Entered May 27, 1948. [130]

In the United States Circuit Court of Appeals for
The Ninth Circuit.

Tax Court Docket No. 12476.

ESTATE OF FRANK K. SULLIVAN, Deceased,
By FLOYD K. SULLIVAN, Executor,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR REVIEW.

Taxpayer, the petitioner in this cause, by Philip C. Jones and Albert Mosher, counsel, hereby files his petition for a review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision by the Tax Court of the United States rendered on May 27, 1948, 10 T. C. No. 124, determining a deficiency in the estate tax of the above decedent in the amount of \$18,936.17, and respectfully shows:

I.

The petitioner is an individual residing at 327 Burlingame Avenue, Los Angeles 24, California, and was [131] formerly the executor of the Estate of Frank K. Sullivan, Deceased. The estate tax return (Form 706) for said estate, being the return of the tax in respect of which the asserted liability arises, was filed with the Collector of Internal Revenue for the Sixth District of California.

II.

NATURE OF CONTROVERSY

The controversy involves the proper determination of the liability of the Estate of Frank K. Sullivan, Deceased, for estate taxes.

The decedent died January 9, 1944, and was survived by Hattie B. Sullivan, his wife.

Prior to the death of the decedent he and his wife, who were domiciled in California, participated in two transactions, the tax consequences and incidents of which are here in question.

1. On November 19, 1943, decedent and his wife jointly made a gift to their son, Floyd K. Sullivan, of certain property (securities) which they at that time owned in true joint tenancy. The fair market value of the property so given by decedent and his wife was \$33,526.54 at the date of the gift. Decedent and his wife filed separate federal gift tax returns and separate California gift tax returns (each donor reporting one-half of the value of [132] said property), and paid the taxes imposed thereon as provided by law.

In his Notice of Deficiency the Comimissioner of Internal Revenue determined that the entire value of the donated property, to wit, \$33,526.54, was includible in the decedent's gross estate for federal estate tax purposes as property transferred in contemplation of death within the provisions of Section 811 (c) of the Internal Revenue Code. A portion of the deficiency asserted by the Commissioner resulted from such determination.

The Tax Court found as a fact that said transfers were made in contemplation of death, and in its opinion and decision sustained the respondent's determination with respect thereto.

Petitioner contends that no part of the value of the donated property was includible in the gross estate of the decedent; that if any part of such value was so includible, only one-half thereof, to wit, \$16,763.67, constituting the value of the one-half interest transferred by the decedent himself, was so includible; that no part of the value of the interest of the decedent's wife in the donated property was includible in the decedent's gross estate; and that the determination of the Commissioner and the findings and decision of the Tax Court opposed to or inconsistent with these contentions and the portion of the deficiency [133] computed and based upon the value of the donated property improperly included by the Commissioner and the Tax Court in decedent's gross estate, were and are unsupported by and contrary to the evidence and were and are erroneous as a matter of law.

2. Subsequent to the making of the gifts hereinbefore mentioned, and on November 24, 1943, decedent and his wife entered into an agreement in writing affecting all of the property then owned and held by them and each of them. All of such property was then and had for many years been owned and held by them in true joint tenancy. By that agreement, together with certain transfers and assignments in writing executed by the respective

parties to the agreement and made for the purpose of clarifying the record title, decedent and his wife terminated the joint tenancies with respect to the property and agreed to and did become tenants in common of said property and of all property owned by each of the parties immediately prior to the execution of said agreement. Each spouse thereafter owned and held an undivided one-half interest in and to all of their property as a tenant in common with his or her spouse, until the death of the decedent occurred.

The property affected by said agreement included United States Savings Bonds of the aggregate value of \$50,027.60 (including interest), at the date of decedent's [134] death. The remainder of said property consisted of real estate and miscellaneous property of the value of \$37,748.75 at the date of decedent's death.

One-half (and no more) of the value of said bonds and one-half (and no more) of the remaining property was included in the gross estate of the decedent in the federal estate tax return filed by petitioner as executor of decedent's will.

In his Notice of Deficiency the Commissioner of Internal Revenue determined that the value of the remaining one-half of said bonds was includible in the decedent's gross estate for federal estate tax purposes as property transferred in contemplation of death within the provisions of Section 811 (c) of the Internal Revenue Code and also as jointly held property within the provisions of Section 811

(e) of the Internal Revenue Code. In the Notice of Deficiency the Commissioner determined that the remaining one-half of the value of the real and miscellaneous property was includable in decedent's gross estate for federal estate tax purposes as property transferred in contemplation of death within the provisions of Section 811 (c) of the Internal Revenue Code. A portion of the deficiency asserted by the Commissioner resulted from the aforesaid determinations.

The Tax Court found as a fact that the above-described transactions relating to the bonds and real and [135] miscellaneous property were transfers made in contemplation of death and did not constitute a bona fide sale for an adequate and full consideration in money or money's worth. In its opinion and decision, the Court sustained the respondent's determination with respect to said transactions.

Petitioner contends that the legal effect of the agreement and writings above mentioned was to terminate the joint tenancies with reference to the properties affected thereby, and to cause the decedent and his spouse to become tenants in common of said property by operation of law; that no transfer was made by the decedent or was involved in the termination of said joint tenancies or in the resultant creation of the tenancies in common; that if any transfer was made by the decedent in said transaction such transfer was made solely as a part of and in consummation of a bona fide sale for an

adequate and full consideration in money's worth; that for the foregoing reasons Sections 811 (c) and 811 (e) (1) of the Internal Revenue Code were and are inapplicable; that no part of the value of the bonds or real estate in excess of one-half of the value of said bonds, real estate and miscellaneous property was or is includible in decedent's gross estate; and that the determination of the Commissioner and the findings and decision of the Tax Court opposed to or inconsistent with the foregoing contentions and the portion of the deficiency computed and based upon the values improperly [136] included by the Commissioner and the Tax Court in decedent's gross estate were and are unsupported by and contrary to the evidence and were and are erroneous as a matter of law.

III.

Petitioner, being aggrieved by the findings of fact and conclusions of law contained in said findings and the opinion of the Court and by its decision entered pursuant thereto, desires to obtain a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated July 22, 1948.

/s/ PHILIP C. JONES,

/s/ ALBERT MOSHER,

Attorneys for Petitioner.

[Endorsed]: T.C.U.S. Filed August 2, 1948. [137]

[Title of U. S. Court of Appeals and Cause.]

**NOTICE OF FILING PETITION FOR
REVIEW**

To Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, Washington, D. C.

You are hereby notified that the petitioner, on the 2nd day of August, 1948, filed with the Clerk of the Tax Court of the United States at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision of the Tax Court of [138] the United States heretofore rendered in the above entitled cause. A copy of the petition for review, as filed, is hereto attached and served upon you.

Dated at Los Angeles, California, this 2nd day of August, 1948.

/s/ PHILIP C. JONES,
/s/ ALBERT MOSHER,
Attorneys for Petitioner.

(Acknowledgment of Service.)

[Endorsed]: T.C.U.S. Filed Aug. 2, 1948. [139]

The Tax Court of the United States
Docket No. 12476

ESTATE OF FRANK K. SULLIVAN, deceased,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Court Room No. 229,
United States Post Office and
Court House Building,
Los Angeles, California,
December 2, 1947—4:00 p.m.

(Met pursuant to notice.)

Before: Honorable Richard L. Disney, Judge.

Appearances: Philip C. Jones and Albert Mosher,
417 South Hill Street, Los Angeles 13, California,
appearing for the Petitioner. Douglas L. Barnes
(Honorable Charles Oliphant, Chief Counsel, Bu-
reau of Internal Revenue), appearing for the Re-
spondent.

PROCEEDINGS [141]

The Court: You are relying on 817 (c) and 811
(c) and (e).

Mr. Barnes: That is correct, your Honor.

The Court: Put on your evidence for the Peti-
tioner, unless you have further statement for the
Petitioner.

Mr. Jones: Mr. Sullivan.
Whereupon,

FLOYD K. SULLIVAN,

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: Tell us your name, please, Mr. Witness. The Witness: Floyd K. Sullivan.

Direct Examination.

By Mr. Jones:

Q. Mr. Sullivan, you are the son of Frank K. Sullivan? A. That is right.

Q. And of Hattie B. Sullivan?

A. That is right.

Q. Both of them are now deceased?

A. That is true.

Q. What is your business or occupation?

A. Investment securities.

Q. Was that your occupation in 1943?

A. Yes. [147]

Q. When did you enter that business?

A. 1928—early 1929.

Q. Your father was in the coal business in Minneapolis, was he, for a number of years?

A. About 45 years, retail coal business.

Q. Subsequent to the sale of that business, do you know of your own knowledge about when he and his wife moved to California?

A. Permanently?

(Testimony of Floyd K. Sullivan.)

Q. Permanently.

A. About 1921 to 1922.

Q. Had they visited California prior to that time, before they made it their permanent domicile? A. Yes, for short periods.

Q. Subsequent to the sale of the business in Minneapolis, did he continue to work for the buyer of the business for a period of time?

A. About two years.

Q. And thereafter did he retire completely from business? A. Yes.

Q. When he and Mrs. Sullivan moved to California, did he enter into any sort of an investment program utilizing the sums that had been accumulated during the period he was in business, or from the sale of the business? [148] A. Yes.

Q. What did he invest in?

A. Well, mostly in so-called gold notes of apartment houses, construction loans, trust deeds.

Q. And income property, such as duplexes, did he invest in that type of property, too?

A. Yes.

Q. Did you consult with him and Mrs. Sullivan at various times with respect to his investment program? Did you represent them, in other words, in a sense, you being in the investment business?

A. Yes.

Q. How was title taken to the investment that he made in the properties which you have described? A. Joint tenancy.

(Testimony of Floyd K. Sullivan.)

Q. And with the sale of joint tenancy property, would the proceeds generally be reinvested in joint tenancy property? A. That is right.

Q. That was their intention?

A. Consistently.

Q. In the year 1942 and 1943, were you doing fairly well in your own business, the investment securities business? A. No. [149]

Q. What was your income for the year 1942, your net income, if you know?

A. Oh, I think it was around \$4,000.00.

Q. What was your net income in the year 1943, to your best recollection?

A. About five thousand.

Q. In 1943, did your mother and father speak to you about making a gift to you? A. Yes.

Q. And what did they say to you about such a gift? A. In what respect?

Q. Did they tell you why they were making a gift to you?

A. Well, I had quite a lot of obligations and bills, and a rather sizable mortgage on a home at the time, and they said they would like to repay the cost in order to make it a little easier for me and they wanted to make a gift.

Q. Do you have any brothers or sisters?

A. No.

Q. Do you have any deceased brothers or sisters? A. One deceased brother.

Q. When did he die?

(Testimony of Floyd K. Sullivan.)

A. Well, he was about six months old when he died.

Q. So for practical purposes you have been the only child. [150] A. Yes.

Q. Subsequent to their discussing with you the desire on their part to make you a gift, what was done in connection therewith?

A. Well, I advised them, not knowing what you could and could not do as far as the tax problem was concerned, advised them to go to a tax attorney by the name of Mr. Clyde Triplett.

Q. Did they go to see Mr. Triplett?

A. Yes.

Q. Did you go with them? A. Yes.

Q. If you recall, about what time was that meeting with Mr. Triplett?

A. Well, it was about the middle of September, 1943.

Q. And at that meeting what was discussed?

A. Well, the general nature of the securities that they held and general discussion of the allowables as far as laws are concerned on gifts, so that they could determine the amount.

Q. Did they while at this meeting in September of 1943 tell Mr. Triplett that they were there for the purpose of considering the making of a gift to you and to find out the legal ramifications involved?

A. That is right. [151]

Q. And did they say that they had a desire to

(Testimony of Floyd K. Sullivan.)

give you any particular or specific type of property?

A. No. He would have preferred to have given me stocks, because he was not stock-minded, he was more trust deed or real estate-minded, would rather have kept those and given me the equities.

Q. What was thereafter done, subsequent to the conference with Mr. Triplett in which you went into the details that they requested concerning the making of a gift to you?

A. Well, I prepared a list of all their holdings and brought it in to Mr. Triplett.

Q. Was that at Mr. Triplett's request?

A. Yes.

Q. And you sat down with your father and mother, I take it, and compiled a list of everything they held at the time. A. Yes.

Q. Incidentally, with respect to their securities investments, did you handle those exclusively for them? A. Yes.

Q. And were you employed at that time or were you in business for yourself?

A. I was employed by Nelson Douglass & Co.

Q. Is that concern now in existence? [152]

A. No, it is not.

Q. Has it been merged with any other organization?

A. It was sold to the First California Company.

Q. Which is now doing business here in Los Angeles? A. Yes, sir.

(Testimony of Floyd K. Sullivan.)

Q. After you prepared a list, together with your mother and father, of all their holdings, did you deliver the list to Mr. Triplett? A. Yes.

Q. What took place then?

A. Well, he suggested then that it may be a good idea for them to bring all the securities into him so that he could see them and see if they were —what form they were actually in, and then they could sit down and decide which ones would constitute the gift, so that I could—he suggested a form of a letter that I could give to Nelson Douglass & Company to instruct them on the transfers.

Q. Well then, subsequent to the time you brought in this list and Mr. Triplett's suggestion to your father and mother that they bring in all of the evidences of title and securities and stock certificates, did they select from that list of properties the properties that constituted the gift to you?

A. Yes.

Q. And thereafter, if I understand it correctly, Mr. [153] Triplett told you to prepare a letter in a certain form addressed to Nelson Douglass & Company. A. Right.

Q. What did the letter contain, if you recall, generally?

A. Instructing them to receive from the account of Frank K. and Hattie B. Sullivan as joint tenants the following securities and retransfer them into the name of Philip K. Sullivan. One of the purposes of it was to also have a record of the

(Testimony of Floyd K. Sullivan.)

selling price of them so that I would know in future capital gain and loss transactions as to the basic cost.

Q. Mr. Sullivan, I show you a letter dated November 19, 1943, or a copy rather, which counsel for the government has handed to me, and would like to have you read it and identify it, if that is the letter that you prepared at Mr. Tripplett's suggestion.

A. Do you wish me to read it?

Q. Read it to yourself.

A. This is the letter they both signed, yes, sir.

Q. Then they both signed that letter. Thereafter did you deliver that letter to Nelson Douglass & Company? A. Yes.

Q. And were the securities referred to in that letter subsequently transferred to your account? Did they come into your hands? [154]

A. Yes.

Q. And would the records of Nelson Douglass & Company clearly show the manner in which those transfers were effected? A. They should.

Mr. Jones: If your Honor please, and Mr. Barnes, in going over the letter from the First California Company which is attached as an exhibit, last evening with Mr. Sullivan, he says this is obviously an error, that it was in his name alone, and so I think perhaps I had better identify that.

Mr. Barnes: Yes, let's identify that for the

(Testimony of Floyd K. Sullivan.)

record. If you wish to make a correction you will have to get some proof here.

Mr. Jones: May I have the original stipulation, your Honor, for just a moment?

By Mr. Jones:

Q. Mr. Sullivan, I am now exhibiting to you a letter dated November 26, 1947, designated 2-B attached to the stipulation which has been filed here and which is addressed to me from the First California Company, which you have already testified to as the successor company to Nelson Douglass & Company. I have previously shown you a copy of this letter and I am referring specifically now to the last item on the page which is designed 40 units S. W. Freight [155] Lines, showing title to be in Floyd K. and Hattie B. Sullivan at the date set opposite the designation of transfer, July 6, 1943, common; June 1, 1943, preferred. Is that, in your opinion, an error? A. Yes.

Q. Was that security, those units of Southwestern Freight Lines, transferred to you?

A. I think this should be Frank K. and Hattie B. Sullivan, because at the time this date mentions they only held a voting trust certificate on that item which later was eliminated and the actual certificates were then in a position to be transferred into actual names. I think it was still in the name of Frank K. and Hattie B. Sullivan at that time, because it could not be otherwise, could not transfer a receipt for a voting trust.

(Testimony of Floyd K. Sullivan.)

Q. Early in June, 1943, that was the situation with respect to the Southwestern Freight Lines units? A. Yes, that is right.

Q. Subsequent to the delivery of the letter to Nelson Douglass & Company with respect to the transfer of these securities, did you ever receive 40 units of Southwestern Freight Lines or its equivalent?

A. Yes, as and when it could be transferred into my name it was.

Q. And the reason that they could not transfer [156] reasonably soon after the delivery of the letter was because of this voting trust arrangement that you mentioned? A. That is right.

Q. After your mother and father came to California they established various bank accounts, I take it. A. Yes.

Q. Are you familiar with the manner in which they held the deposits in these bank accounts?

A. Yes. They never had anything but a joint bank account until after he died.

Q. Until after his death, and did the proceeds of the income from the joint tenancy property find its way by deposits by both your mother and father into these joint tenancy bank accounts?

A. Yes.

Mr. Barnes: If the Court please, I don't believe this witness is competent to testify to the proceeds. I think that is obviously incorrect until after we first show personal knowledge on your

(Testimony of Floyd K. Sullivan.)

part of how these proceeds were treated, Mr. Sullivan.

The Court: Don't address the witness. Address your objections to me. You have been leading this witness. Did you hear what I said about discounting leading questions or any testimony elicited by leading questions?

Mr. Jones: I don't believe I was in the court room [157] yet then.

The Court: For the information of all attorneys, I really must disregard testimony elicited by leading questions, because, of course, I can't go on what attorneys say about a matter. I have got to have testimony before me. You are injuring your case if you lead your witness. That objection is overruled, but I will take into consideration the knowledge or lack of knowledge I have as to whether this witness knows what he is talking about. If you want his testimony on the matter, which you have just gone into, to be given consideration, you had better show that he knows what he is talking about. Proceed.

By Mr. Jones:

Q. Did you assist your mother or your father in opening bank accounts from time to time?

A. Yes.

Q. Did you assist your mother and your father with respect to the investment program and the handling of income from the various assets they owned? A. Yes.

(Testimony of Floyd K. Sullivan.)

Q. Are you personally familiar with the condition of your father's health for a period of a year or so before his death? A. Yes.

Q. What was the condition of his health on the date in [158] September when they discussed with you the making of a gift to you and you consulted Mr. Triplett?

A. Excellent, as far as I could know.

Q. What did your father die of?

A. Well, surgery.

Q. Performed by whom?

A. Dr. Harvey G. McNeil.

Q. Would you relate for the Court the circumstances surrounding that surgery. When was he taken to the hospital, if you remember?

A. I think it was in December, early December. He started to develop a bit of yellow jaundice.

Q. This was December of 1943?

A. Yes, and Dr. McNeil prescribed hot packs for a period of a week to see if that would relieve the inflammation or whatever was causing it. That failing, he decided to take him to the hospital and drain his gall bladder.

Q. Did he tell you that that was what he was going to do? A. Yes.

Q. And thereafter was your father operated on for that purpose, draining his gall bladder?

A. The first time, yes.

Q. For the purpose of the record, it is stipulated that that surgery occurred on December 20th. Sub-

(Testimony of Floyd K. Sullivan.)

sequent to [159] that surgery, did you discuss your father's condition with Dr. McNeil? A. Yes.

Q. What did Dr. McNeil tell you?

A. Well, he thought that the thing to do when he got strong enough again would be to go in and do some sort of an operation that would let the gall bladder drain into the stomach, I believe it was, other than where it usually does, in order to get rid of the bile that caused the jaundice, that he was going to try to build him up to perform that operation. The draining apparently was only a temporary relief.

Q. Thereafter did he perform a second surgical operation on your father? A. Yes.

Q. And did he tell you at that time or subsequent to it what his post operative diagnosis was? Did he tell you what he found, in other words?

A. After the second operation he did, yes.

Q. What did he tell you?

A. He said he discovered cancer of the pancreas.

Q. Had he ever mentioned to you or to your knowledge to your mother that he thought your father might have had carcinoma of the pancreas—

A. No. [160]

Q. —prior to that time? A. No.

Q. Do you know whether Dr. McNeil ever advised your father that he thought, prior to the two surgical operations, that your father had carcinoma of the pancreas?

Mr. Barnes: If the Court please, I don't be-

(Testimony of Floyd K. Sullivan.)

lieve this witness is competent to testify to conversations between his father and the doctor at which he was not present.

The Court: I would like you to read that question to me.

(The question was read.)

The Court: This merely asks him whether he knows. I will not entertain under that question an answer as to what was said. He is merely asking him if he knows.

By Mr. Jones:

Q. You can answer that question yes or no, Mr. Sullivan.

The Court: Read the question to him.

(The question was re-read.)

The Witness: No.

By Mr. Jones:

Q. Do you know a Dr. Julius Kahn?

A. Yes.

Q. Do you know whether he attended your father?

A. I think he thought there was something wrong with his intestines and gave him a G. I. at one time prior to the time he went into the hospital, then released him. [161]

Mr. Jones: For the record, it has been stipulated that Dr. Kahn examined the decedent on November 18, 1943, and had him admitted to the Cedars of Lebanon Hospital for further examination on the 21st.

(Testimony of Floyd K. Sullivan.)

The Court: I have that before me.

By Mr. Jones:

Q. Did you ever discuss your father's condition with Dr. Kahn? A. No.

Q. Did he ever discuss it, to your knowledge, with your mother or with your father?

A. Not to my knowledge.

Q. Going back for a moment, Mr. Sullivan, to the original conference and meetings with Mr. Triplett that you mentioned, if you know, will you state whether your parents told you they were going to see him just to determine what they could do by way of making a gift to you? A. Yes.

Q. And the discussion at that time only had reference to making a gift to you?

A. That is right.

The Court: That is decidedly suggestive and leading, counsel. Let him testify.

By Mr. Jones:

Q. Subsequent to the first meeting with Mr. Triplett, [162] did you ever attend any other meeting with your parents?

A. Yes, I was with them all the time, I mean every day, going to or from the office.

Q. I mean by that, was there ever any other meeting at which you were present with Triplett and your mother and father. A. Yes.

Q. Do you recall about when that meeting occurred?

A. I think that was about November 7th or 8th or 9th, along in there.

(Testimony of Floyd K. Sullivan.)

Q. Where did it take place?

A. In Mr. Triplett's office.

Q. Will you relate to the Court at that time that you were present what took place?

A. Well, as I recall, at that time we took care of the problems connected with the gift, and also Mr. Triplett questioned my dad on where he got his money and how, and made a suggestion that considering the experience that he would be well advised to terminate the joint tenancy, and explained that setup to them.

Q. Was there an occasion for any subsequent meetings at which you attended with Mr. Triplett and your mother and father?

A. Well, not very many days later he came to the apartment house where they lived with the necessary papers [163] and had them go over the papers and sign them so he could file them, and after that was done, I believe suggested that he review their old wills and I was asked to get those out or have them get them out, and I remember, recall taking them into him the next day.

Q. When you say getting their wills, what do you mean?

A. Well, to have them get their old wills out of their box and take them down to Mr. Triplett to review them. There were changes that he thought probably would be necessary to be made.

Q. Did your father ever register any complaints to you or in your presence to the condition of his

(Testimony of Floyd K. Sullivan.)

health in the year 1943 and up to, say, the middle of November?

A. No. I played golf with him every week.

Q. You did play golf with him every week. Are you familiar with the Bonnie Lee Apartments Corporation and St. Francis Apartments Corporation? This is preliminary, your Honor. A. Yes.

Q. Subsequently to the agreement dated November 24, 1943, which you have stated your father and mother entered into, did you do anything in connection with that agreement or did your parents request that you do anything in connection with it?

A. In what respect? [164]

Q. In handling of transfers of securities.

A. Well, only as an errand boy between them and Mr. Triplett getting things signed up, or information for him that he wanted.

Q. Did you deliver to Nelson Douglass & Company, the company that was your employer, any securities for transfer subsequent to November 24, 1943, that you recall? A. On the gift part?

Q. No, no. This is subsequent to the agreement between your father and mother whereby they terminated the joint tenancy.

A. Yes, I believe so.

Q. Was any transfer made of the Bonnie Lee Apartment Corporation stock? A. No.

Q. Do you know why no transfer was made?

A. Yes. It was impossible.

(Testimony of Floyd K. Sullivan.)

Q. Will you explain that?

A. Well, when—quite sometime prior to that the building had been sold and the moneys received by my father and mother, all but about, as I guess, 8 or 10 per cent of the final payment, and the stock certificates representing the ownership of the Bonnie Lee were all turned in, and all they had was receipts for them, and pending final distribution, which was held up until they knew exactly what the [165] final costs of the transfer of ownership was to be, they were not in possession of the stock certificates.

Q. Was that corporation in the process of liquidation?

A. Liquidation, that is right, sale and the same with the St. Francis.

Mr. Jones: I have discussed with counsel for the Respondent, your Honor, the question concerning the dissolution of the Bonnie Lee Apartments Corporation, and he has agreed to stipulate that the certificate of election of that corporation to dissolve was executed on the 28th day of July, 1943, and was filed with the Secretary of State of the State of California on July 30th.

The Court: 1943?

Mr. Jones: 1943.

The Court: Is it so stipulated?

Mr. Barnes: So stipulated.

Mr. Jones: It is further stipulated, your Honor, that the written consent to the winding up and dis-

(Testimony of Floyd K. Sullivan.)

solution of this corporation executed by the shareholders shows that Frank K. Sullivan and Hattie B. Sullivan held 896½ shares as joint tenants on July 17, 1943, which is the date upon which they signed the consent.

Mr. Barnes: So stipulated for Respondent, your Honor. [168]

By Mr. Jones:

Q. Are you familiar with the St. Francis Hotel Apartments Corporation? A. Yes.

Q. Was any transfer of the stock of that corporation effected, if you know?

A. The same situation as the Bonnie Lee, except that it took longer to finish it up and there was a very small amount of residue due them, but they were not in possession of the certificates there.

Q. Do you know how your mother and father held title to stock in that corporation?

A. Joint tenancy.

Q. Had they then, as in the Bonnie Lee Apartments Corporation, sometime previously surrendered their certificates? A. That is correct.

Court: It might be of some convenience to later witnesses, if you have later witnesses here, for me to state that I do not want to sit until just a very little after 5:00, so if there is another witness here that expected to go on this evening, you may as well excuse him.

Mr. Jones: I was just going to suggest I am finished except perhaps for some redirect with Mr.

(Testimony of Floyd K. Sullivan.)

Sullivan. I don't know how long you will take, Mr. Barnes. I think [167] perhaps it would be courtesy to excuse Mr. Triplett.

Mr. Barnes: Yes, I believe that will be all we can do today.

The Court: Yes, we will not reach Mr. Triplett this evening. He might as well go. Now, let me be sure I tell him when to be back here in the morning. I am a little confused. Is Mr. Sullivan the witness that you thought was not going to be here until tomorrow?

Mr. Jones: That is right.

The Court: I thought you said that he was the executor.

Mr. Jones: I thought we might have trouble reaching him because he is out of town.

The Court: Very well. Then we will be recessed until 10:00 o'clock. You may be here tomorrow at 10:00 o'clock. I don't mean that we are recessing now, but when we do recess it will be to 10:00 o'clock.

Mr. Triplett: I will be here at 10:00 o'clock.

The Court: Proceed.

Mr. Jones: Your witness, Mr. Barnes.

Cross Examination.

By Mr. Barnes:

Q. Mr. Sullivan, what was your age at the time of the transfers of these properties to you by your mother and father? [168] A. 44.

Q. And you were married at the time?

(Testimony of Floyd K. Sullivan.)

A. That is right.

Q. Did you have any children? A. Yes.

Q. How old were your children?

A. About 13, one girl.

Q. One girl age 13. You testified that you also owned a home? A. That is right.

Q. When did you acquire that home?

A. About 1933 or '34.

Q. Your earnings in the years 1942 and 1943 were between \$4,000.00 and \$5,000.00, a year, according to your testimony. What were your earnings prior to 1942 and 1943 in comparison to your 1942 and 1943 earnings?

A. Well, the amount earned was in 1940, \$3,-425.00; 1941, \$2,768.00; 1942, \$4,481.00; and 1943, \$5,221.00.

Q. You were a little better off in the years 1942 and 1943 than you were in the years prior to 1940, then, is that correct, Mr. Sullivan?

A. Not much.

Q. Had your parents ever given you any substantial amount of property before the year 1943?

A. No. [169]

Q. Did you ever inquire why in the year 1943 the need was any greater as far as you were concerned than it was in earlier years?

A. Inquire?

Q. Why did the need seem greater to you in the year 1943 than it had in any prior year?

A. Well, my earnings were less and I had

(Testimony of Floyd K. Sullivan.)

about a \$7,500.00 mortgage on which I had to make payments and so on, and we had some medical, excessive medical expenses, and a girl aged 13 begins to cost money.

Q. Doesn't a girl between the ages of 1 and 13 also cost money, Mr. Sullivan?

A. I am afraid it increases.

Q. As I understand your testimony, your earnings were larger in 1943 than they had been in any preceding year to which you have testified, and that would indicate, would it not, that your financial position was somewhat better in those years than it had been in former years?

A. Yes, a little.

Q. You had the mortgage on your home at all times since the date of purchase, Mr. Sullivan, is that correct? A. Yes.

Q. You had been paying on this mortgage in all the preceding 10 year period?

A. That is correct. [170]

Q. And your parents had never made any gifts to you in that time? A. No.

The Court: Keep your voice up, please, Mr. Sullivan.

By Mr. Barnes:

Q. You have testified that you were generally acquainted with the nature of your parents' investments. You were aware that many of the investments were not carried as joint tenancy but were carried in the name of your father alone?

(Testimony of Floyd K. Sullivan.)

A. Yes.

Q. And that is a fact? A. Very few.

Q. Did your father continue to play golf, Mr. Sullivan, up to the month of November, 1943?

A. Yes, sir.

Q. Did he say anything to you regarding complaints as to his health?

A. Until November?

Q. Immediately preceding the month of November 1943. A. No.

Q. Did you know that he was going to see a specialist regarding an internal condition of some sort? A. Not the first time, no.

Q. Did he ever mention to you that he was going to see Dr. Julius Kahn? [171]

A. No, that was the first time.

Q. And he didn't discuss that with you at all?

A. I knew that, yes, I knew that he was going to go under observation from him.

Q. From Dr. Kahn?

Mr. Jones: I think he misunderstood your question.

Mr. Barnes: Oh, I see.

By Mr. Barnes:

Q. How was your mother's health at the same time, Mr. Sullivan? A. Excellent.

Q. Was she under any medical care?

A. No.

Q. Did you notice any jaundice, which is as I understand a yellowish condition of the skin, did

(Testimony of Floyd K. Sullivan.)

you notice that condition with respect to your father or any loss of weight?

A. In late November.

Q. You did notice that in the month of November 1943?

A. The latter part of the month as I recall, yes.

Q. Did you ever hear your father say in explanation of his loss of weight anything to the effect that he was not feeling up to par?

A. Well, it didn't seem to have any effect, particularly, on his general health, except that he just had the yellowish [172] color.

Q. But he was interested to the extent that he was going to physicians and specialists to take care of his health at that time. A. Yes.

Q. How was your father's appetite at that time? Do you have any personal knowledge of that, Mr. Sullivan? A. Yes. He was always a good eater.

Q. During the time that he was going to Dr. Kahn's office, did he continue to have a good appetite? A. As far as I know.

Q. Did your father have any loss of weight before he was attending the physicians that we have mentioned in evidence?

A. Not to my knowledge.

Q. Now, Mr. Sullivan, turning to the conference with Mr. Triplett, I believe you testified that Mr. Triplett advised your father to terminate this joint tenancy. What was the purpose of this advice, do you know?

(Testimony of Floyd K. Sullivan.)

A. Well, as I gathered it, he asked him a considerable number of questions as to when and how he earned the money that he brought out here, and told him that he would save, if anything should happen to him at sometime in the future he would save money in taxes if he terminated the joint tenancy. [173]

Q. What kind of taxes was he talking about saving, Mr. Sullivan? Estate taxes? A. Yes.

Q. And he was advised then to create tenancies in common rather than joint tenancies, in order to save estate taxes. Is that a correct statement of it?

A. That is correct.

Q. Did your father ever mention to you that he was having his will redrafted, at the time you were in Mr. Triplett's office?

A. No. That came later.

Mr. Jones: Which time, now?

By Mr. Barnes:

Q. At any time that you were in Mr. Triplett's office prior to the 24th day of November when the contract was executed in connection with the joint tenancies themselves.

A. Well, that came up at the time he came out to my family's apartment to have them sign the papers. Then he discussed that.

Q. Why did your father request that Mr. Triplett come to the family's apartment?

A. Because it was more convenient.

(Testimony of Floyd K. Sullivan.)

Q. Doesn't your father customarily go to the attorney's office in connection with these matters?

A. He did the next day. [174]

Q. Isn't it true that on the 14th day of November when these agreements were executed your father had just been released from the Cedars of Lebanon Hospital? A. No.

Mr. Jones: If you know.

The Witness: I don't think so.

By Mr. Barnes:

Q. You knew that he was in the Cedars of Lebanon Hospital, however?

A. At one time, yes.

Q. And that that was immediately preceding the date when Mr. Triplett called at your father's apartment with the contract dated the 24th day of November, 1943, for signature by your father and your mother? A. Yes.

Q. Do you know the contents of your father's will, Mr. Sullivan?

Mr. Jones: Which one, now?

Mr. Barnes: I am speaking now of the will which was executed and administered as part of the estate of Frank Sullivan, deceased.

Mr. Jones: The probated will?

Mr. Barnes: Yes.

The Witness: Yes, I think I have read that.

By Mr. Barnes:

Q. Did you also know the substance of your prior wills which your father had prepared?

(Testimony of Floyd K. Sullivan.)

A. I believe so, yes.

Q. Was there any material change between the early will and the later will insofar as you were concerned? A. No.

Q. You were the party to whom your father intended to leave most of his estate, is that correct?

A. Yes.

The Court: It is now after 5:00 o'clock, gentlemen. I think we will recess. We will be recessed until 10:00 o'clock tomorrow morning.

(Whereupon, at 5:10 p.m., an adjournment was taken until 10:00 o'clock a.m., Wednesday, December 3, 1947.)

December 3, 1947

The Clerk: Docket No. 12476, Estate of Frank K. Sullivan, deceased.

The Court: Proceed.

Whereupon,

FLOYD K. SULLIVAN,

called as a witness for and on behalf of the Petitioner, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (Continued)

By Mr. Barnes:

Q. Mr. Sullivan, I believe you testified that you were familiar with the letter identified in the rec-

(Testimony of Floyd K. Sullivan.)

ord as Exhibit 1-A, which is a letter addressed to Nelson Douglass & Co., by Frank K. Sullivan and Hattie B. Sullivan, dated November 19, 1943. Who prepared the letter to which we have just referred?

A. I did.

Q. You wrote the letter yourself and had prepared it in your office at the Nelson Douglass & Co. at that time, is that correct? A. Yes.

Q. Where did you have the letter signed by your parents, Mr. Sullivan? Where did you take the letter for signature?

A. I don't remember whether they came down to the office [180] or I got it from them.

Q. When you prepared this letter, Mr. Sullivan, did you have it dated at the time it was written in your office?

A. I can't recall that, either.

Q. All you know is you prepared a letter which we have in evidence here and it was signed by Frank K. Sullivan and Hattie B. Sullivan at sometime thereafter? A. That is correct.

Q. Now, you are aware that your father was in the Cedars of Lebanon Hospital from the 21st day of November, 1943, until the 24th of November, 1943. That is a period of four days, is it not, Mr. Sullivan? A. That is right.

Q. Did you visit your father at the Cedars of Lebanon Hospital while he was there? A. No.

Q. Did your mother visit your father while he was in the Cedars of Lebanon Hospital?

A. I think she did.

(Testimony of Floyd K. Sullivan.)

Q. You spoke to your mother or father during that time that your father was in the hospital?

A. Yes.

Q. Did you have any discussion with respect to the findings of the doctor or the complaints which your father was making, which required his treatment out there at the [181] hospital at that time?

A. No. It was just a routine check up, so far as I know.

Q. Had your father ever had a routine check up at the Cedars of Lebanon Hospital at a previous time? A. No.

Q. Had he ever had a routine check up at any hospital previously? A. Not that I know of.

Q. Did you know at the time your father was discharged from the Cedars of Lebanon Hospital he was discharged with a recommendation of surgery? A. No.

Q. What arrangements did your father make with respect to admission to the California Lutheran Hospital? Did you participate at all in the arrangements made for his operation? A. Yes.

Q. I understand your physician at that time was Dr. McNeil, at the California Lutheran Hospital.

A. Yes.

Q. Had Dr. McNeil attended your father prior to his admission to the California Lutheran Hospital? A. In prior years, you mean?

Q. Yes. A. No. [182]

Q. When did your father first see Dr. McNeil? I am speaking with respect to the period between

(Testimony of Floyd K. Sullivan.)

the time he left the Cedars of Lebanon Hospital November 24, 1943, and the date of his admission to the California Lutheran Hospital on December 16, 1943. We have there a period of somewhat less than a month. In that period of time when did he first call on Dr. McNeil?

A. I think it was about 10 days before or thereabouts, from a week to 10 days before he was admitted to the hospital.

Q. Did your father tell you that he was going to the hospital to have surgery performed?

A. The day he went, yes—the day before he went, yes.

Q. At no previous time did he indicate to you he had been discharged from the Cedars of Lebanon Hospital with recommendation of surgery?

A. No.

Q. Don't you think it is a little unusual that a man 78 years old would have so little information passed to his family at a time of that sort?

Mr. Jones: I object, your Honor; argumentative.

The Court: Objection sustained.

By Mr. Barnes:

Q. Was your mother ever informed of the diagnosis made by the Cedars of Lebanon Hospital or Dr. Julius Kahn? A. No. [183]

Q. Was your mother ever informed that your father was going to the California Lutheran Hospital for surgery? A. Yes.

Q. When did she speak to you about that fact?

(Testimony of Floyd K. Sullivan.)

A. Well, the day or two days before he actually went in. We went up to Dr. McNeil's office and discussed it, and he decided that was what he should do.

Q. I would like to clear up just for a moment, Mr. Sullivan, the question which was raised with respect to an item appearing on the document identified as Exhibit 2-B on the stipulation, which is a letter dated November 26, 1947.

The Court: Do you have that stipulation, Mr. Clerk?

The Clerk: Yes.

By Mr. Barnes:

Q. With respect to certain securities which were originally transferred to Nelson Douglass & Co., I believe—

Mr. Jones: I don't believe that is correct, your Honor. They were delivered to Nelson Douglass for transfer.

Mr. Barnes: I will let the record speak for itself. I think it is in evidence.

By Mr. Barnes:

Q. The particular item I have in mind is your explanation with respect to 40 units of Southwestern Freight Lines, which you mentioned at the last session of the court, appearing on the bottom line of the first page of that letter. [184]

Now, I notice, Mr. Sullivan, that it is stated by the First California Company that on November 16, 1943, they received certain securities for the account of Floyd K. Sullivan, which were on that

(Testimony of Floyd K. Sullivan.)

date apparently sent to transfer. What do they mean by "sent to transfer"?

A. Well, I imagine they mean that these securities that were in joint tenancy they owned and were giving me were sent on November 16th to transfer into my name by myself.

Q. To whom did they send them, to another branch of the concern there?

A. No. Each corporation has its own transfer agent. It might be New York, or Chicago.

Q. At any rate, they were sent through for processing in your understanding of the business, you being in this business, you would know the manner in which these things are handled. A. Yes.

Q. They were simply sent to you for processing?

A. Yes.

Q. Now, it is stated on the bottom line here that the 40 units of Southwestern Freight Lines certificates were dated on July 6, 1943 and June 1, 1944, in the name of yourself and your mother.

Mr. Jones: Excuse me, Mr. Barnes. It is June 1, 1943. [185]

Mr. Barnes: Excuse me. I am corrected; June 1, 1943.

By Mr. Barnes:

Q. That is the thing I am concerned with here. What was your explanation of that item yesterday? I don't believe I quite understood that, Mr. Sullivan.

A. Well, as I understood it, at that time the voting stock of the Southwestern Freight Lines was

(Testimony of Floyd K. Sullivan.)

held in the voting trust. There had, up to that time, never been any actual certificates issued to the stockholders in their name. All we had was a receipt, numbered receipt showing the deposit and the ownership of X number of shares. Those receipts were non-negotiable. I think that that is an error, because I never held anything in joint ownership with my mother or anybody else.

Q. Well now, it is obviously an incorrect statement there to say those securities were issued after being received on November 16, 1943, that they were sent to transfer and the resulting securities were issued at a date earlier than November 16, 1943, is it not? Would it be possible that date should be 1944, at which time you and your mother were--may I strike that, and say in 1944 you were the executor of your father's estate, is that correct?

A. Yes.

Q. Your mother was the live tenant with respect to the [186] property passing under your father's will, is that correct? A. Yes.

Q. Were any securities in 1944 issued in your name and your mother's name for any reason?

A. There might be one. What about that union bond—

Mr. Jones: If the Court please, Mr. Barnes, I will stipulate that all the securities that were returned in Mr. Sullivan's estate were subsequently transferred by the various issuing companies and new certificates were issued in the names of Hattie B. Sullivan, as a live tenant, under that estate, and Floyd Sullivan as a remainder interest.

(Testimony of Floyd K. Sullivan.)

Mr. Barnes: I would like to straighten this out for the record. It is obvious to me, Mr. Jones, you can't receive a certificate on November 16th of one year and have it issued in a new name on a preceding date.

Mr. Jones: I agree with you, and Mr. Sullivan testified yesterday that he had at no time ever held in joint tenancy with his mother. It obviously was an error he received the 40 units of the Southwestern Freight Lines or its equivalent.

By Mr. Barnes:

Q. You don't know, of your own knowledge, what the facts are with respect to that, do you, Mr. Sullivan?

A. I would want to check it up with this company, which I could do very easily. [187]

Q. We will have to let the record stand the way it is, then.

Mr. Jones: If you would like—

The Court: Is it possible for some reason the stock certificate—it was stock, wasn't it?

Mr. Barnes: Yes.

Mr. Jones: Units of both common and preferred.

The Court: It speaks of units.

Mr. Jones: Yes.

The Court: Looking at it as a stock certificate, is it possible there was some reason the certificates were dated back on these 40 units? As I say, it would be ordinarily unthinkable that having been sent for transfer on November 16th of a certain

(Testimony of Floyd K. Sullivan.)

year, 1943, the resulting certificate, which is what they call it, was dated June 1, 1943, unless there was some reason—

Mr. Jones: For pre-dating?

The Court: —for dating a certificate back.

The Witness: That is something we can find out.

Mr. Jones: That is something I am not conversant with. Perhaps when we are through with Mr. Sullivan he could be excused to go down to the First California Company and check on the matters. It is only a few blocks down.

The Court: We will pass it for the present. For the present it would make a better record if you could explain [188] it. Proceed.

Mr. Barnes: I have no further questions.

Mr. Jones: Mr. Barnes, I think perhaps we should have entered into the record the stipulation that we agreed upon prior to your continuing the examination of Mr. Sullivan, and it pertains to the documents attached to the stipulation, executed by Frank K. Sullivan and Hattie B. Sullivan individually or jointly.

The stipulation is to the effect that those documents which are copies here, the originals of which were actually signed by the parties whose signatures they purport to bear.

The Court: Is it so stipulated?

Mr. Barnes: It is so stipulated that the signatures of the parties appearing on these documents are the signatures of the parties themselves.

The Court: Is there any further examination of this witness?

(Testimony of Floyd K. Sullivan.)

Mr. Jones: I have some redirect, your Honor.

The Court: Proceed.

Redirect Examination

By Mr. Jones:

Q. Mr. Sullivan, Mr. Barnes asked you about the letter dated November 19, 1943, which is the letter to the Nelson Douglass & Company, marked Exhibit 1-A in the stipulation. With respect to its execution on the date it bears, do you [189] know whether that letter was dated at the time your mother and father signed it or prior to the time they signed it or subsequent to the time they signed it?

A. I believe that I wrote the letter and had them sign it simultaneously, or the next day. Therefore, I would have dated it approximately the same day as they signed it.

Q. Thank you. There has been some evidence with respect to conversations between you and Dr. McNeil, who attended your father during his last illness. How long have you known Dr. McNeil?

A. 25 years.

Q. Has he been your family physician?

A. Mine, yes.

Q. Have you become an intimate acquaintance of his? A. He is a client of mine.

Q. He is a client of yours? A. Yes.

Q. During the course of the period in which he treated your father, did you consult with him frequently? Did you see him often? A. Yes.

Q. In respect to the 40 units of Southwestern

(Testimony of Floyd K. Sullivan.)

Freight Lines, I believe in response to a question from Mr. Barnes, you testified that the common stock was held in a voting trust. Isn't it a fact that all the stock constituting the units was [190] held in that trust?

A. Yes, because the preferred was convertible.

Q. I see. Yesterday when you were being cross examined with respect to the events that occurred on November 24, 1943, and I believe this is correct although I am not sure, you met with your father and mother at the apartment house with Mr. Tripplett. Where was that apartment house located?

A. It was the Bonnie Lee Apartment house at 840 South Hobart.

Q. That is the apartment house owned by the corporation securities which have already been referred to in this proceeding? A. Yes.

Q. On that date did you observe the condition of the health of your father? A. Yes.

Q. What was your opinion of it?

A. He was in good health.

Q. Did he live at that apartment house?

A. No.

Q. What was he doing there, if you know?

A. Well, having a large interest in it he spent a great deal of time in assisting in the management of it.

Q. Was he connected with the management in any way, do you know? [191]

A. Yes, he was president of the corporation.

Q. You mentioned he had a large interest in the corporation. What do you mean by that?

(Testimony of Floyd K. Sullivan.)

A. Well, substantial amount of money represented by stock ownership in it; some 800 or 900 shares.

Q. Do you have any knowledge of how many shares outstanding there were?

A. 200, I believe—that is, 2000.

Q. Was he the largest single stockholder, if you know? A. Yes.

Q. Yesterday on direct examination we referred to certain transfers of securities included in the agreement between your mother and father dated November 24th, and I neglected to ask you about transfers concerning the Chicago City Railway Corporation bonds and the Union Trust Deed funds, and as well United States Governments referred to in that agreement and described. Was a transfer made of the Chicago City Railway Bonds?

A. I don't believe so.

Q. Was a transfer made of the Union Trust Deed funds which are designated as Union Bond Fund A? A. I don't think they were.

Q. Was a transfer made of United States Governments? A. No.

Q. Do you know why none of these transfers were effected? [192]

A. Well, I apparently overlooked the Chicago Railway and the Union Bond A. But the Governments could not be transferred.

Q. You say they could not be. Will you explain that?

A. Well, they weren't bearer form bonds. They

(Testimony of Floyd K. Sullivan.)

were in the name of co-owner Frank K. or Hattie B. Sullivan in Series E, F or G's. You cannot transfer those bonds into another name, unless one co-owner dies. Then you can re-transfer them into the name of the remaining owner or, I believe, under certain divorce proceedings; other than that the only way you could transfer them would be to sell them, cash them in and re-issue. And in the case of Series G Bonds the price declines from the issuance date, so that if that were done there would be considerable loss involved in doing it.

Q. With respect to the Governments, that was the situation? A. Yes.

Q. Insofar as the transfer was concerned. The loss involved necessitating, as a result of the necessary sale of the bonds, in order to secure a re-issue of them? A. That is right.

Q. Did you advise your mother and father that these bonds could not be transferred and it would be inadvisable to transfer them because of the matters you have just stated? [193]

A. I think both Mr. Triplett and myself advised them of that.

Q. But they none the less considered that after that agreement they owned one-half of the bonds.

The Court: Don't lead your witness or ask him what somebody else considered. He wouldn't know, anyway. I wouldn't consider his testimony if he stated it. You are leading the witness.

Mr. Jones: Let the question be stricken.

(Testimony of Floyd K. Sullivan.)

By Mr. Jones:

Q. During the times in question here and from about September of 1943 on, were you familiar with the financial worth of your parents? A. Yes.

Q. What were they worth, if you know?

A. Well, between \$150,000.00 and \$175,000.00.

Q. Yesterday on cross examination you answered Mr. Barnes with respect to the question he asked you concerning gifts, prior gifts from your parents, your father or your mother, either one. I am not clear in my own mind what your answer was, and I will now ask you if you received any gifts from your parents, any prior gifts to the gift involved in the list of securities described in the letter of November 19th to the Nelson Douglass & Co.

A. Well, I believe my answer was no. Thinking back [194] that is not correct.

Q. On the basis of your having devoted further thought to the subject, what is your answer now?

A. Well, back in 1930 he bought a lot in Beverly Hills and built a house, and gave it to us. I was thinking that he was referring more to gifts of this nature—

Q. Comparable to the securities?

A. —that we had to file gift tax returns on, and so forth.

Q. Where was that house located?

A. In Beverly Hills.

Q. Was that the house you stated you had mortgaged? A. Yes.

Q. What was the reason for mortgaging the house? You may have answered this yesterday, I

(Testimony of Floyd K. Sullivan.)

am not sure. My notes aren't too complete on it.

A. Well, I had incurred quite a lot of debt principally in connection with considerable medical expense with my wife, and at that time I was in a partnership by the name of Gibson and Sullivan in the securities business, which was in the depth of the depression, and was losing money. To try to hang on that I had borrowed money on the house, to clean up my bills, and also make it possible to stay in business.

Q. You mentioned that you were in business in a partnership. When was that partnership formed?

A. 1931.

Q. What business was it engaged in?

A. General securities, general brokerage business.

Q. How much did you invest in the business?

A. Nothing.

Q. How did you operate?

A. Well, my father deposited some twenty-five thousand dollars' worth of high grade negotiable bonds with the Security-First National Bank. And we would use those as collateral, as our sales and purchases.

Q. Would the deposit of those bonds, as you have described, in the stock and bond business constitute its working capital?

A. Well, we never touched the bonds themselves or sold any of them, to use money. We had some money as current working capital besides that, maybe a couple of thousand dollars.

(Testimony of Floyd K. Sullivan.)

Q. Is it necessary in the stock and bond business, to, as you mentioned, have on deposit collateral?

A. Well, if you purchase a security from another house and re-sell it to a buyer, it sometimes happens that you have to pay for the security before your purchaser pays you. So you must be able to go to the bank and borrow if you don't have the necessary cash in the business, in order to facilitate that contract. [196]

Q. That deposit, then, provided a basis for additional working capital.

A. In that respect, yes.

Q. How long did you remain in that business, that partnership? A. Until August of '34.

Q. What happened then?

A. I decided to eliminate the partnership because we were losing money.

Q. Was it insolvent?

A. No, not strictly speaking.

Q. But it was dissolved. A. Yes.

Q. Did either of the partners suffer losses?

A. Yes, both of us.

Q. What was your loss?

The Court: I am wondering why that is material. How does that help your case, Mr. Jones?

Mr. Jones: It is preliminary. On the basis of an offer of proof, instant to this loss Mr. Sullivan found himself indebted to his father in a substantial amount of money and his father thereafter agreed to discharge the obligation to him and return for the trade of some property which Mrs. Sullivan inherited just about this time.

(Testimony of Floyd K. Sullivan.)

The Court: I still don't see where that particularly [197] advances your case. I won't stop you. Go ahead.

Mr. Jones: It is not too pertinent. I think we can drop it.

The Court: I am not telling you to drop it. I am just wondering if you think it advances your case. Go ahead.

By Mr. Jones:

Q. What did you do to discharge your loss, your portion of the loss in the partnership?

A. I transferred title to a duplex that Mrs. Sullivan had inherited, as complete payment for the loss.

Q. What was the amount of your loss?

A. \$12,000.00, roughly.

Mr. Jones: Incidentally, for the record, the Mrs. Sullivan he referred to who inherited the property is his wife; not his mother.

The Court: You had better bring it out by testimony. I have great regard for attorneys' statements, but I can't take them as evidence.

By Mr. Jones:

Q. When you refer to Mrs. Sullivan, whom do you mean? A. Alice C. Sullivan, my wife.

Q. She inherited a piece of property?

A. Yes.

Q. What did you say you did with that property?

A. We transferred it to my father and mother in repayment for the loss sustained in the business.

(Testimony of Floyd K. Sullivan.)

Q. If you know, approximately, what was the value of the property that you transferred in discharge of the loss, the obligation?

A. Well, it probably wasn't at that time—as a guess \$7,500.00.

Mr. Jones: Thank you. That is all. You may have the witness if you have any recross, Mr. Barnes.

Recross Examination

By Mr. Barnes:

Q. On this particular situation about which you are speaking, I understand now that your father did advance certain collateral to you in prior times, while you were in financial difficulty, is that correct?

A. Yes.

Q. He never made a gift outright to you of any of those stocks and securities which were advanced as collateral?

A. No.

Q. Were the \$50,000.00 United States Series G Savings Bonds cashed after your father's death, Mr. Sullivan, were they cashed at any time subsequent to the death of your father?

A. They automatically are cashed on the death.

Q. They were automatically cashed?

A. Yes.

Q. On death? A. Yes. [199]

Q. Those are payable to the survivor, is that correct?

A. Correct.

Q. The money was paid to your mother, Hattie B. Sullivan.

A. Yes.

Q. You had been acquainted with Dr. McNeil

(Testimony of Floyd K. Sullivan.)

for 25 years, I believe you testified. A. Yes.

Q. Did you recommend your father to Dr. McNeil? A. Yes.

Q. When did you recommend that your father see Dr. McNeil?

A. Well, it was around the early part of December.

Q. Why did your father want to go to see a doctor at that time?

A. Well, he developed this yellow complexion and I wanted to take him up there to see what he thought about it.

Q. What did your father say about his previous treatment at the Cedars of Lebanon Hospital when he was requesting further advice from a physician?

A. He said they didn't know what they were doing, they didn't know anything about it, didn't tell him there was anything wrong with him.

Q. What did he tell you regarding their recommendations to him, Mr. Sullivan? [200]

A. He didn't say they had any recommendations.

Q. Who recommended that your father go to the California Lutheran Hospital?

A. Dr. McNeil.

Q. Did your father first call on Dr. McNeil after you had introduced him to the doctor, introduced your father to the doctor?

A. I made an appointment and took him in there.

Q. You took him in yourself to see Dr. McNeil?

A. Yes.

(Testimony of Floyd K. Sullivan.)

Q. Can you fix in your own mind the date when you first called on Dr. McNeil with your father?

A. Well, it must have been about—not more than 10 days prior to the time that he went into the California Lutheran, because the only thing he prescribed for him when we went in was hot packs for a week, to try to draw out what inflammation he considered was present.

Q. Those were hot packs where, on the abdomen, the abdominal region?

A. Yes, back and front.

Q. You think your father had any suspicion he had a cancer, Mr. Sullivan? A. No, I don't.

Mr. Barnes: I have no further questions.

Mr. Jones: Do you have the estate tax return?

Mr. Barnes: Yes. We will introduce that in evidence before we are through.

Redirect Examination

By Mr. Jones:

Q. Mr. Sullivan, I am showing to you now the estate tax return Form 706 for Frank K. Sullivan, which I have received from Mr. Barnes, and which has been stamped as the duplicate. A short time ago Mr. Barnes asked you some questions with respect to the \$50,000.00 in U. S. Governments. You stated, if I recall, that they were automatically payable or redeemable upon the death of one of the co-owners, and if I recall correctly you stated that the proceeds were paid to your mother.

Now, I show you Schedule B of this estate tax

(Testimony of Floyd K. Sullivan.)

return and refer particularly to Item 6. You signed this estate tax return, did you not, as the executor of the estate? A. Yes.

Q. You were the executor at the time this estate tax return was prepared? A. Yes.

Q. Referring to Item 6 of Schedule B, will you read that and see if it refreshes your recollection with respect to the disposition of the proceeds of those bonds?

A. Yes, that is true. But— [202]

Q. Wait a minute. Before you say that is true, wait a minute. Your recollection is now refreshed. On that basis, what disposition was made of the proceeds of those bonds subsequent to their redemption, as the result of the death of your father?

Well, they were turned in to the Federal Reserve Bank downtown for collection.

Q. That is right. Now, you received the proceeds. What did you do with the proceeds?

The Court: Don't tell your witness what he did. Let him testify. You are going to badly affect the testimony of this witness if you don't quit suggesting to him.

Mr. Jones: Strike the question, Miss Reporter.
By Mr. Jones:

Q. After you turned in the bonds for redemption, what happened?

A. I don't recall offhand what I did with the proceeds immediately.

Q. Is the estate tax return, which I have shown you, or more properly was it prepared with respect

(Testimony of Floyd K. Sullivan.)

to all of the assets of the estate you had any knowledge of? A. Yes.

Q. Is that correct? A. Yes.

Mr. Jones: Do you want to introduce this now, Mr. [203] Barnes?

Mr. Barnes: Yes, it should go in evidence. The Respondent would like to offer that return in evidence as part of the record.

Mr. Jones: We would like it as a joint exhibit.

The Court: What are your numbers and letters?

Mr. Jones: The next one coming up would be 12-L, if we follow the sequence of the exhibit numbers in the stipulation.

The Court: Let the instrument be admitted in evidence, that is, the estate tax return of the Estate of the deceased Frank K. Sullivan. It will be admitted in evidence as Joint Exhibit 12-L.

(The tax return above-referred to was received in evidence and marked Joint Exhibit No. 12-L.)

Mr. Barnes: That is all, Mr. Sullivan.

The Court: I want to ask this witness a question or two.

By the Court:

Q. You said something about playing golf with your father. Up to what time did you play golf with him?

A. Up until a few days before he went into the Cedars we would play.

Q. Would you play, would you say, with him once a week?

(Testimony of Floyd K. Sullivan.)

A. Once a week and sometimes once every two weeks. I [204] think the last time we played was in November, somewhere along the line in November.

Q. Give me the best idea you can as to how active your father was.

A. He was a very rugged active man.

Q. Just a moment. On the golf grounds, in comparison with the ordinary pace with which golfers play, if there is any ordinary pace. Was he as active as you were?

A. I wouldn't say that, no, not at 77. He could play 18 holes on a flat course or 9 on a hilly one with no ill effects or trouble.

Q. Did he go at a reasonable pace?

A. Yes.

Q. Or did he have to go slower?

A. Yes, he could keep up with any crowd.

Q. What did your father talk about? That is a very broad question. Did he talk about his ills?

A. No, he was never one to—never had any, to my knowledge.

Q. He was not given to talking about the state of his health?

A. No, he was not. Nor did he have any ills, to my knowledge of any consequence, ever since I have known him.

Q. Do you know of any plans that he had for the future? A. In what respect, your Honor?

Q. Any respect, at that time, the fall before he died. A. No, I don't.

(Testimony of Floyd K. Sullivan.)

Q. Was he making any plans that you know of for the future?

A. No. The only plans he would make would be for trips, and he had already just previously made one to Minneapolis and back, to see his sister.

Q. You know of no other plans he had in mind?

A. No, I do not.

The Court: That is all I will ask.

(Witness excused.)

The Court: We will take a recess at this time for 10 minutes.

(Short recess taken.)

Mr. Mosher: Mr. Triplett.

Whereupon,

CLYDE TRIPLETT,

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, sir.

The Witness: Clyde Triplett.

Direct Examination

By Mr. Mosher:

Q. Where do you reside, Mr. Triplett? [206]

A. Los Angeles.

Q. Your occupation? I am a lawyer.

Q. You are engaged in practice in Los Angeles?

A. I am.

Q. For how many years? A. Since 1924.

(Testimony of Clyde Triplett.)

Q. During the course of your practice have you had occasion to deal with tax matters?

A. I have. I have specialized in tax matters.

Q. You, of course, are admitted to practice before this court and also the Treasury Bar?

A. I am.

Q. And as I understand it, you have also been a California estate inheritance tax appraiser for some years.

A. I still am; have been since 1939. Prior to that time I was chief attorney for the State of California in the Southern District, inheritance tax division.

Q. Did you know the decedent Frank K. Sullivan, whose estate is in controversy in this case?

A. I did.

Q. Did you know his wife, Hattie B. Sullivan?

A. I did.

Q. And their son, Floyd Sullivan?

A. I did. [207]

Q. When did you first become acquainted with them or any of them?

A. The first time I became acquainted with any of them was when they came to my office on September 27, 1943.

Q. Who came to see you on that occasion, Mr. Triplett?

A. All three of the persons you have mentioned, Mr. Sullivan, Sr., the deceased, and his wife and the son Floyd Sullivan, or Lloyd Sullivan.

Q. At that time a conversation ensued?

(Testimony of Clyde Triplett.)

A. It did.

Q. Do you recall the substance of that conversation? A. I do.

Q. Will you please state it?

A. The three of them came to my office at 10:00 o'clock that morning, about that time. The appointment was 10:00 o'clock. They introduced themselves and Mr. Sullivan, Sr., Frank K. Sullivan, told me that he and his wife wished to make some gifts to their son. They wanted to consult me with reference to gift tax returns and what gift taxes would be, if any.

I told them what the exclusions and exemptions were. They could each give their son—I think I said \$33,000.00, that year, providing they hadn't made any previous gifts.

I asked them if they had made any previous gifts to anyone. They said no, except Christmas and charitable, small [208] gifts. I told them they could give their son each \$33,000.00 without there being any federal gift tax.

Mrs. Sullivan said, "Well, we didn't have in mind giving him that much." She said, "What we wanted to give him, what we want to give him is something that will give him some additional income."

I think it was the son said he was employed as a salesman with Nelson Douglass & Co., securities brokers in this city, and that the security business wasn't very good.

His mother, that is, Hattie Sullivan, said that

(Testimony of Clyde Triplett.)

he had a child and that they were very fond of the child and it was getting expensive, to the expensive age and they wanted to give him some more income besides what he was making. But that they had in mind only giving him about half of what I suggested they could give him.

I told them that there would be a state gift tax, told them what the exemption was, \$5,000.00 from each, plus the annual exclusion. And that even at \$30,000.00 they would have to pay a California gift tax.

Then I asked them who was going to make the gift, who owned the property or whatever they were going to give him.

They said they both owned it. They said they owned everything together.

I asked them how they owned it, how their titles [209] were. They said everything they had was in joint tenancy between Mr. Sullivan, Sr. and Hattie, his wife.

Then I asked them—I told them sometimes joint tenancy is rather confusing in California, sometimes it is held to be community property. I asked them where they acquired the property, where it came from. They told me they were married in the middlewest. I don't remember what state it was. And that he had been in the coal business, Sullivan Coal Company, or a similar name in Minneapolis, Minnesota, and that is where he made his money.

I asked him if he had ever inherited anything

(Testimony of Clyde Triplett.)

from anybody, and they told me they hadn't. He said all his money he had made in the coal business in Minneapolis.

Well, I asked him where the coal business was and we had a considerable conversation, because I had lived in Minneapolis and I recall him asking me where I had lived, and we talked as to whether he had ever delivered coal to our house. There was considerable conversation about Minneapolis, Minnesota, and Minnesota, and I told him I didn't understand why people left a beautiful state like Minnesota and came to join this race out here. And I recall him saying Minnesota was better for business, but when you quit business it was better to be in California, particularly as you get older.

He said you could play golf all the year around, and I recall Mrs. Sullivan saying that she spent most of the [210] summer time slapping mosquitoes in Minneapolis. We talked about golf. He asked me what course I played, and I told him I had for years played Bel-Air. I had just quit or was about to quit because I couldn't make any score on that course. He told me he couldn't, either, and the course was too hilly. He preferred—

Mr. Barnes: If the Court please, I believe the testimony of this witness is a little extensive for the type of question asked him in this particular instance.

I believe the question was the course of the conversation, but I believe there has been no showing all this is particularly material to the subject now which is the execution of these documents.

(Testimony of Clyde Triplett.)

The Court: Don't go into too much detail, Mr. Triplett. Go ahead with the conversation. I think it might be helpful.

The Witness: He told me with golf he played to get a better game; he could get a better game than I could. I couldn't get under 90 and he could. But he preferred Brentwood and the South Course at Los Angeles. There was considerable conversation about golf.

I told him that they would have to make up their minds what they wanted to give the boy; what specific thing was the first thing to do. It was my opinion that—I asked him, too, whether he had made any money after he came [211] to California or increased his wealth. He told me he was worth more when he came to California than he was at that time, that he had made some pretty sour investments, but he was in the process of working the last of them out and getting most of his money out, but that he had lost some money.

He told me that his son didn't like some of his investments and thought they would give the son some of the securities, stocks. So I told them to make a detailed list of everything they owned and select the things that they wanted to give to the son, items, and bring it in to me and that I would attend to the details or tell them what to do, and attend to the making of the different tax returns and the computation of the state gift tax when the returns were due. Then they left my office. I would say they were there an hour or so.

(Testimony of Clyde Triplett.)

Q. Did you receive the list, Mr. Triplett?

A. I received a list at a later date.

Q. Do you have that list or a copy of it?

A. I have the original list that was given to me. Some other things were given to me, deeds were given to me and the documents, but this is the list that was given to me.

Q. Under what circumstances did you receive this, Mr. Triplett, that is, was it mailed in or brought in?

A. I believe it was brought to my office, but I have no recollection of the occasion on which it was brought there. [212]

Q. Do you know when with reference to the date of this first interview with the Sullivans it was brought to you?

A. It was brought before Mr. Sullivan came in the next time, which was some several weeks later. I would say in the month of October.

Q. You saw neither Mr. Sullivan, the deceased, nor Floyd, the son, nor the mother for several weeks after that first interview?

A. That is right; two weeks, at least.

Q. Do you know who prepared this list, that is, in whose handwriting it is?

A. I do not. Some of the notations on there are in my handwriting. Those letters "E" in red pencil, and the checks, but the pen and ink—the pen and ink there is not my handwriting. And that is the list as it was delivered at my office.

Mr. Mosher: If the Court please, we will offer

(Testimony of Clyde Triplett.)

the list that Mr. Triplett has referred to, we will offer it in evidence as the next exhibit in order.

The Court: Petitioner's Exhibit 13, is it?

The Clerk: That is correct, your Honor.

The Court: Petitioner's Exhibit 13, the list just identified, is admitted in evidence.

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 13.) [213]

By Mr. Mosher:

Q. Subsequent to the first interview in your office, Mr. Triplett, when was the next time, if there was such a time, that you consulted with Mr. and Mrs. Sullivan with reference to this gift or any other matters?

A. Mr. Sullivan came in without an appointment some weeks after September 27, 1943.

I would say about the middle of October, along there, and they came in without an appointment. I believe he brought some of the deeds or instruments mentioned on this list. He talked some more about Minnesota and golf and told me he was having some difficulty finding some of the things I had called for. He said as soon as he got them ready, the balance of them, they would come in and see me again. And he told me that they had not determined or decided what specific items they were going to give the son. That was all the conversation at that time.

Q. Did you subsequently have a conversation with Mr. or Mrs. Sullivan?

(Testimony of Clyde Triplett.)

A. I had an appointment with them at my office on November 9, 1943, at 10:30 a.m.

Q. Who was present at that time, Mr. Triplett?

A. Mr. and Mrs. Sullivan and I believe the son was also there.

Q. You had a conversation with them at that time? [214] A. I did.

Q. You recall the substance of that conversation?

A. They told me—we went over the list of the things, this list that has been introduced in evidence, and identified items which they said they had decided they were going to give to the son. I made some notations on that.

They also at that time brought—left at my office the balance of the deeds, the notes, trust deeds and other items that represented the things that they owned.

At that time I examined them and I found that one piece of real estate wasn't in joint tenancy at all. There may have been one or two other items, I don't recall. But I remember distinctly there was one piece of real estate that was not, it was in the name, in his name, Mr. Sullivan, Sr.

I suggested to him, I told him that in my opinion it wasn't a good thing for him to leave, he or his wife to own their property in joint tenancy. He told me when they came to California somebody had told them to put everything in joint tenancy.

I told him that I didn't think that was a good idea. It wasn't community property, never had

(Testimony of Clyde Triplett.)

been, and that if one of them died it went on to the survivor, but that under the 1942 amendment to the Revenue Code if they are in joint tenancy and he were to die it would all be included in his estate. [215]

I suggested to them that—I told them I thought it advisable to break their joint tenancy and give up their right of survivorship and divide the property between them, either as tenants in common or either—better yet, the things that could be actually divided in kind be divided in kind.

I told them I didn't think there would be any gift tax involved. I thought it was an exchange. And I told them that he was taking some chance, however, if his wife should die first, and that after they reached such a division half of it would be in her estate. Not that the amount was so large it made much difference in tax consequences, but it would make some additional probate expense. I explained that to them.

I don't believe that he told me at that time—at that time I think he said that they would think it over and call me back. And I kept all of those things in my office pending the receipt of their instructions.

Q. Was that all of the conversation at that time, as you recall?

A. Substantially so.

Q. Subsequently did you receive advice from them as to what they, if anything, wanted you to do in this connection? A. I did. [216]

(Testimony of Clyde Triplett.)

Q. How did you receive that communication?

A. My recollection is I received it by telephone call. Mr. Sullivan, Sr. called me and told me they had thought it over, talked it over and that they thought my advice was sound, and to go ahead.

I forgot one thing. In the conversation at the conference on November 9th, when they selected the securities they were going to give to the son, I told them to take the securities to a brokerage office. The son said they would take care of that at Nelson Douglass & Co.

I told the son to write a letter or to have his father and mother write a letter directing them to make the transfer, and to state it was a gift to him, so that he would be sure to have as of that date a clear written record it was a gift, as it might some day be used in connection—if there was any question as to his cost basis on those items. That advice was given at the November 9th meeting, the November 9th conference.

Q. Digressing a moment from the previous line of questioning, to follow this up, this subject that you just brought up, did you do anything after that time with reference to the gift to Floyd K. Sullivan?

A. No, except I believe that Floyd Sullivan called me on the telephone or read me a letter which he had written or somebody had written to the Nelson Douglass & Co., and asked [217] me if I thought it was all right.

I said it was and for them to send me a copy

(Testimony of Clyde Triplett.)

of it, because I would need it in connection with the preparation of the gift tax return.

Q. I hand you, Mr. Triplett, what purports to be a duplicate of a federal gift tax return for the year 1943 for the donor Frank K. Sullivan, and ask you if you can identify that document.

A. I can; I prepared it.

Q. And the signature on this document is that of—

A. That was not prepared, counsel, until after the end of the year, 1944.

Q. Can you identify the signature on that?

A. I can. Signed by Floyd—well, that—I don't know about that Floyd K. Sullivan. I know my writing on there, my name is signed twice in my own handwriting. A notary in my office, I believe, that Floyd K. Sullivan—this must be a copy. That is the handwriting of my secretary, that Floyd K. Sullivan (indicating).

Q. That is not a duplicate return. This is the copy?

A. This is a copy, not an executed duplicate, I don't believe.

Q. The duplicates were filed and you perhaps didn't keep a third one. A. Yes. [218]

Mr. Mosher: I will introduce this in evidence, your Honor.

Mr. Barnes: May I examine that again just a moment?

Mr. Mosher: Yes.

The Witness: I want to—I don't know—that

(Testimony of Clyde Triplett.)

was my office copy. You said I didn't keep one; that was my office copy (indicating).

By Mr. Mosher:

Q. What I meant was you didn't have a third executed copy. A. No.

Mr. Mosher: Your Honor, maybe we can save some time at this time by deferring this offer until later, and maybe we can simplify it after conferring with counsel. I will withdraw—

Mr. Barnes: I have no objection to his introducing the duplicate. I have the original here in my file. I do not believe these documents are material to this controversy. I believe it is agreed that there was a purported gift made and the filing of a gift tax return, I assume, would be a matter of professional pride with Mr. Triplett, to see those details were followed out. We have no objection to the Petitioner offering that if they want to.

The Court: How is that material here?

Mr. Mosher: I don't think it is too important. We [219] want to have the record clear on the fact these were completed gifts, intended as such by all parties, during the life time of the decedent. That the plan was—

The Court: The objection will be overruled in that regard. It may complete the story.

Mr. Mosher: I do believe, though, your Honor, that—I have a group of gift tax returns, donors and donees, state and federal, and some state clearances. That is, notice of determination. I may be able to offer them as a single exhibit and save some time.

(Testimony of Clyde Triplett.)

The Court: We will pass on to something else then. I wouldn't think it would be necessary or particularly would it further the case to put all those matters in, so far as the gift is concerned. I do appreciate it is a part of the story.

Mr. Mosher: Perhaps I can clear it up by testifying, very briefly.

By Mr. Mosher:

Q. You prepared tax returns for Mr. and Mrs. Sullivan in connection with the gift to their son Floyd about which you have testified?

A. I prepared both donees and donors gift tax returns, federal and state, in February of 1944, and transmitted them to the proper offices, government offices, together with payment of check for the State Tax of California. [220]

Q. Was any federal tax due as disclosed by those returns? A. Yes.

Q. Was any state tax due as disclosed by those returns? A. Yes.

Q. Do you recall the amount?

A. No, I don't. I may have it in correspondence, whatever it was. I computed it and I sent a check along with the return.

Q. Was any deficiency, to your knowledge, ever proposed with reference to either the federal or state gift tax return of either of these parties to which you have referred?

A. Not to my knowledge.

Mr. Mosher: I think with that, your Honor, we will not attempt to introduce those documents.

(Testimony of Clyde Triplett.)

By Mr. Mosher:

Q. Now, going back, Mr. Triplett, to the time that you were advised to proceed with the plan of dividing up the properties, did you undertake to consummate that plan? A. I did.

Q. What did you do with that, in that connection?

A. Well, at first I consulted a title company as to the mechanics, with reference to the real estate and trust deeds. Then I prepared assignments of each trust deed and note from both Mr. and Mrs. Sullivan, and [221] assignment from Mr. Sullivan, as I recall, of an undivided one-half interest to her from Mr. Sullivan as her separate property. And I prepared deeds both to Mr. Sullivan and to Mrs. Sullivan back from Mr. Sullivan as to an undivided one-half interest as her separate property.

I prepared an agreement, proposed agreement which, I believe is in this agreement or contract between them that counsel speaks of. I prepared it. I attended the execution of all those documents.

Q. I hand you, Mr. Triplett, the stipulation of facts which has been introduced in this matter; appended to it are certain exhibits which I will ask you to examine and state whether the documents to which you have referred are those of the same description annexed to this stipulation.

A. This copy of the will which is Exhibit 5-E I prepared; Exhibit 6-F I prepared; and 7-G; and 8-H; and 9-I; 10-J. That is all, although they in-

(Testimony of Clyde Triplett.)

clude, each one of those exhibits includes several documents. I prepared all of those.

Q. The originals of those documents, I take it, are the documents to which you referred in your testimony as having prepared them.

A. That is right. I prepared a contract. I don't see it there.

Mr. Jones: It is not there. [222]

Mr. Barnes: If the Court please, I believe that contract is attached to the petition. It would not be a part of the stipulation.

The Witness: When is that contract dated?

Mr. Jones: November 24th.

Mr. Barnes: November 24th.

The Witness: That is right.

Mr. Mosher: Mr. Barnes, I hand you a copy of what appears to be the original of that. Can it be stipulated the copy attached to the petition is a true copy of this contract?

Mr. Barnes: I will so stipulate.

By Mr. Mosher:

Q. Now, Mr. Triplett, will you examine this document which purports to be a contract dated the 24th day of November, 1943, and state whether that is the contract which you have referred to as having prepared it?

A. Yes, I prepared it and attended its execution.

Q. Were these various documents executed in your presence or under your supervision?

A. They were.

(Testimony of Clyde Triplett.)

Q. Will you state the circumstances under which they were executed?

A. On November 24th—I don't have an appointment in my book, because there wasn't an appointment made previous [223] to that time. On November 24th I received a telephone call from either Mr. Sullivan or Floyd Sullivan, the son; I can't remember which. I think it was the son. He asked me if I had the documents prepared, and I said I had.

He told me that they were just leaving the Cedars of Lebanon Hospital.

I asked him what he was doing at the hospital.

He said his father was there for a check up or observation, and that his father was going to an apartment house he was running, this Betty Lee or Kitty Lee, or something.

Q. Bonnie Lee.

A. Bonnie Lee. And that he had to be there at a certain hour and wondered if I could bring the documents out there, because his mother, that is, Mrs. Sullivan would be with them and they could sign them there.

I checked my time, and I said I could. So I met them out there at that apartment house, the address they gave me. I didn't write it down in my book. I noted it, I think, on a little slip of paper. But I went there and saw them.

The Court: Before you get away from it, gentlemen, this contract you have identified, the contract about which the witness has testified with

(Testimony of Clyde Triplett.)

the one copy of which is attached to the petition, I don't know whether you intended to put [224] that in evidence or not. The petition is not evidence. I am just calling your attention to the fact the petition is not evidence.

Mr. Barnes: I believe the stipulation of facts incorporates by reference that contract and states it is the contract of the parties.

The Court: Very well.

Mr. Mosher: Your Honor, to avoid any possible question about this, we would like to introduce the original contract or offer it in evidence, because this is basic in this case. We don't want any legal question to arise on that or any question as to the sufficiency of the record in that connection. Although I don't like to clutter up your Honor's file.

The Court: We don't want any more record than is necessary. I didn't want you to overlook something, as you say, that might be basic.

Mr. Mosher: I appreciate that, your Honor. We offer this contract dated November 24, 1943, in evidence.

Mr. Barnes: No objection.

The Clerk: No. 14.

The Court: The instrument offered is the instrument you prepared, Mr. Witness?

The Witness: I did.

The Court: Let the instrument be admitted in [225] evidence as Petitioner's Exhibit No. 14.

(Testimony of Clyde Triplett.)

(The document above-referred to was received in evidence and marked Petitioner's Exhibit No. 14.)

By Mr. Mosher:

Q. Now, Mr. Triplett, you prepared some wills for Mr. and Mrs. Sullivan, didn't you?

A. I did.

Q. Will you state to the Court the circumstances under which you did that work?

A. I didn't do that until later, after the meeting in the apartment, at which time all these other documents, these exhibits I have identified and the contract were executed, in some apartment in the building. I don't know where it was. We went up on one of those run-your-own elevators. I took my notary public along with me.

We met Mr. and Mrs. Sullivan in the apartment designated, designated over the telephone.

Q. Did you know at the time of your meeting on November 24th whether or not Mr. and Mrs. Sullivan had a will in force?

A. I don't recall whether I did or not. I talked to them about it on that occasion. I had no recollection talking to them on previous occasions; I may have.

Q. What was said on that occasion with reference to the subject of a will or wills? [226]

A. After these various exhibits I have identified were signed by Mr. and Mrs. Sullivan, notarized and the contract was signed and I believe

(Testimony of Clyde Triplett.)

notarized, I told Mr. and Mrs. Sullivan I thought it would be a good idea for me to look over the wills and if they had no objection that I would, and they told me that they already had wills, I think. I know he said he had a will. He left everything to his wife in it. And I think she told me she said she had one leaving everything to him.

I said I thought it might be a good idea for him and his wife, for each of them, to leave the other a life estate, with the remainder over to the son, and that would avoid, in the event of either, possibly a subsequent probate proceeding and expense tax.

Mrs. Sullivan said that she thought that was all right, because she said if Mr. Sullivan died Floyd would look after her affairs, anyway.

But Mr. Sullivan said that he didn't like the idea but if Mrs. Sullivan died he thought he could look after his own affairs.

Anyway, I said, "Give me the wills." They didn't have them there. This was at kind of an office. They had some desks in there. He didn't have any wills. The wills were—one will, anyway, Mr. Sullivan's will was sent to me at a later date; only a few days later. [227]

I prepared a new will for each of them, the one I have identified here as being Mr. Sullivan's will, and I also prepared her will. I attended their execution at a later date.

Q. Would you state the facts concerning the execution of those wills, that is, when and where that was done?

(Testimony of Clyde Triplett.)

A. Well, the day the wills were executed, which was November 30, 1943, I telephoned to Mr. Sullivan or to their home, told them that the wills were ready to be executed and that I was going to Beverly Hills. They lived in Beverly Hills. And if they wanted me to I would bring them by on my way out and we would sign them if they had a witness, another witness.

I talked to Mr. Sullivan on the telephone and he said that would be fine, that they would get a witness in the neighborhood, and to come along whenever I got there. So I went out there.

When I got through—I was on my way to a meeting—I stopped at the house. Mr. and Mrs. Sullivan were there. They read the wills. I again explained that life estate provision and I had not incorporated it in his will and had in hers. They said that was what they wanted.

I explained why I had changed the executor from a bank to a son, making the bank the alternate executor. Mr. Sullivan went and got some neighbor, the man that appears as [228] a witness on the exhibit, by the name of Abraham, that I had never seen before, from some place in the neighborhood. He came in, and they signed the wills, and I kept a copy and left them the originals. That is the last time I ever saw either Mr. or Mrs. Sullivan or had any conversation with them, I believe.

I may have had some conversation with Mrs. Sullivan at the time the gift tax returns were prepared. If so, I don't recall it.

(Testimony of Clyde Triplett.)

The Court: When was the will prepared or executed, the date?

The Witness: It was executed on the date it bears, November 30, 1943.

By Mr. Mosher:

Q. Mr. Triplett, did you at any time during your meetings with Mr. Sullivan observe any physical infirmity in Mr. Sullivan?

A. I observed no physical infirmity, but at the time—infirmit, I don't know. The first meeting with Mr. Sullivan, he appeared to me to be a perfectly normal person. He smoked two or three cigars while he was in my office.

The time I met him out—the second time in the office he appeared to be—

Q. That was November 9th, now?

A. No, when he came in before November 9th, in October [229] sometime. The first time that he looked any different than anybody else in any respect was when I saw him out at the apartment house, when he signed the assignments, the exhibits which I have identified.

At that time—well, I talked with him about his condition. He looked kind of yellow.

Q. Prior to that time did he appear to you as a man in normal health? A. He did.

Q. Good health?

A. Appeared to me to be perfectly normal prior to that time.

Q. He appeared to be an energetic man?

A. Yes. He smoked an awful lot of cigars, and from what he told me he played golf regularly.

(Testimony of Clyde Triplett.)

Q. When you saw him at the Bonnie Lee Apartments he looked a little yellow?

A. Yes.

Q. That was on November 24th. How did he appear at the time that he executed the will, which you prepared?

A. He looked about the same. He still looked a little yellow. He was still smoking cigars.

Q. Did he at any time during your contact with him discuss with you his health or physical condition?

A. At the Bonnie Lee Apartments was the only time he did. [230]

Q. What did he say?

A. Well, I asked him what was the matter with him, why he had been in the hospital. He said that he had been over there, the doctors thought he had something wrong with his gall bladder. They had starved him to death—this is his language—starved him to death for three or four days and fed him a lot of paint, and the X-rays didn't show anything, and that he didn't think the doctors knew what they were talking about.

Q. That was the only conversation you had with him concerning his health or physical condition?

A. Yes.

Q. Mr. Triplett, was anything ever said during the whole of any of these conversations with Mr. or Mrs. Sullivan or their son Floyd to suggest to your mind that the gift of those securities to him was to save taxes or secure an economic benefit for Mr. or Mrs. Sullivan?

(Testimony of Clyde Triplett.)

A. No. You are talking about the gift to Floyd Sullivan?

Q. Yes. A. No.

Q. Similarly, was anything ever said to indicate that that gift or proposed gift was motivated by thought of death? A. No.

Q. The division of the properties, however, as I [231] understand it, were made at your suggestion? A. Wholly at my suggestion.

Q. And having in mind the saving of estate taxes, to some extent?

A. The idea of the dividing of those joint tenancy properties was my idea. I will take the responsibility for it. They never suggested it. I suggested it to them.

Mr. Mosher: That is all:

The Court: We will adjourn at this time until 2:00 o'clock.

(Whereupon, at 12:30 p.m., a recess was taken until 2:00 p.m. of the same day.)

[232]

Afternoon Session, 2:00 p.m.

The Court: Proceed.

Mr. Mosher: No further questions.

Whereupon,

CLYDE TRIPLETT,

called as a witness for and on behalf of the Petitioner, having been previously duly sworn, resumed the stand and testified further as follows:

(Testimony of Clyde Triplett.)

Cross Examination

By Mr. Barnes:

Q. Mr. Triplett, at the time of your employment with the decedent and his wife and I believe Mr. Floyd Sullivan on November 9, 1943, to which you testified on direct examination, you did discuss at that time the severance of the joint tenancy which was part of the property of the decedent, is that correct? A. Yes.

Q. Did you discuss with them the possibility that the changing of their ownership would necessitate the execution of the new will and carrying out a different plan for disposition of their assets by will?

A. I don't believe I did at that time. In fact, that didn't necessitate a new will.

Q. Did you discuss the possibility that it might necessitate a new will? [233]

A. I don't believe so. I don't believe the will was discussed until at the time at the apartment.

Q. I also believe that you mentioned the 1942 Act in connection with this joint tenancy situation. I think you were referring there, were you not, to the community property situation arising out of the 1942 Act, is that correct?

A. That is right.

Q. And the joint tenancy, the provisions pertaining to joint tenancy with which you were concerned in speaking to the Sullivans were the provisions which were in the Act both before and after the 1942 Act itself?

(Testimony of Clyde Triplett.)

A. Yes. I explained to them that if it remained in joint tenancy on the death of the wife I didn't think any of it would be includable in her estate, but if we split the joint tenancy, that it would be.

Q. In other words, it was your advice by splitting the joint tenancy you would create tenancies in common, the husband's estate would include only half as much property as it would have had he died prior to the execution of the agreement.

A. Tenancy that couldn't be divided in kind; if there were any items that could be divided in kind I told him there should.

Q. You discovered, did you not, that certain of the assets were not held by joint tenancy? [234]

A. I discovered one parcel was held in his name alone and I think there was another item, but I am not sure.

Q. Were you aware that some of these securities which were the subject of a transfer to Floyd K. Sullivan were also held in the sole name of Frank K. Sullivan?

A. I don't believe I was. I don't believe—they didn't bring actually the securities into my office. I took their word on that list. If the list showed that one was not, then I knew it. I can't recall without looking at the list.

Q. Now, if I understand the testimony with respect to the wills which you prepared for Mr. and Mrs. Sullivan, the will which you prepared for Mrs. Sullivan contained what provision with respect to her interest in any assets upon her death?

(Testimony of Clyde Triplett.)

A. Well, I have a copy of it here. It provided, I am sure, that it went all to him, that is, to the husband, if he survived. And then if he didn't, it went to the son and if he were not living, then it went to the son's wife and to the son's daughter and to some sisters-in-law.

Mr. Barnes: I have no further questions.

Mr. Mosher: I am not sure, your Honor, this is proper redirect. It is a small point I would like to ask Mr. Triplett to clear up as to something about this agreement. [235]

Redirect Examination

By Mr. Mosher:

Q. Mr. Triplett, referring to Exhibit 14, page 2, under the heading "Notes Secured by Trust Deeds" it reads: "Five (5) promissory notes secured by trust deeds, as follows:—" and then it appears that only four items are listed.

Can you explain that?

A. Yes. That list I gave you, which is an exhibit here, I believe you will find five trust deeds and notes listed. In writing this agreement we made a mistake and put four of them in. I had the assignments of the notes and trust deeds which are exhibits, I have identified, made out for the five trust deeds and notes, and this is just purely an omission.

Now, you will notice there is an initial on here. I guess that was only for the change of the town.

(Testimony of Clyde Triplett.)

It is initialled "O.K." out there, at the time it was signed.

Q. That is on page 3?

A. On page 3. But that was purely an omission in my office, and I considered it remedied by the fact I actually had assignments in the file.

Q. The assignments of the five were made and that coupled with the general language of the agreement took care of the whole thing?

A. I thought so. [236]

Mr. Mosher: That is all.

Q. Let me ask you this: Mr. Witness, in some cases of this nature I have had evidence before me that the attorney in connection with transfers which might be questioned later by the government as transfers in contemplation of death, for one reason or another, the attorney advised that the party who was making the transfer have a physical check up. Now, did you give any such advice?

A. I did not.

Q. Did you ever play golf with Mr. Sullivan?

A. No, I never met him until he came in my office that day.

Q. What did he say to you as to anything about his health? A. At that time?

Q. Any time.

A. Well, the only time—the first time I ever talked to him about his health was when the trust deed—assignments of the trust deeds and notes and the contract was executed in that apartment house, after he was at the Cedars of Lebanon Hospital.

(Testimony of Clyde Triplett.)

That day, or when I got out there, I asked him what was the matter with him. They had called me from the hospital. I asked him what he was in the hospital for.

He said, as I have testified, that he was there for [237] observation or check up, and that they thought there was something the matter with his gall bladder, that his bile wasn't going through.

Q. Was that the only time the subject of his health was ever discussed between you and him?

A. That is the only time.

Q. Did he say anything about expecting surgery? A. No.

The Court: That is all I wanted to ask.

Mr. Barnes: No further questions, Mr. Triplett. Thank you.

The Court: This witness is excused by both sides, is he?

Mr. Mosher: Yes.

Mr. Jones: Yes.

Mr. Barnes: Yes.

The Court: You are excused for further attendance.

(Witness excused.)

Mr. Jones: Your Honor, please, we have consulted with the First California Company with respect to that problem concerning the 40 units of the Southwestern Freight Lines, which is referred to in the Exhibit 1-A attached to the stipulation.

I have received from the assistant comptroller of the First California Company a letter dated

today, which [238] explains the situation. I have supplied counsel for the government with a copy of that letter and in order to clarify the record I would like to offer at this time as our exhibit next in order this letter.

The Clerk: Exhibit 15.

Mr. Barnes: Well, I anticipate there could be considerable objection to that offer. In view of the fact the record is very ambiguous with respect to that item I will stipulate this explanation, which does make some sense out of an incomprehensive situation, may be accepted in evidence.

The Court: You are agreeing here that the statements here would be the evidence of this party, E. J. Lind, if he were placed on the stand.

Mr. Barnes: I so stipulate.

The Court: That is the effect of your understanding?

Mr. Barnes: Yes.

The Court: This isn't evidence at all, unless it is so agreed. Let the exhibit be admitted in evidence with that understanding as Petitioner's Exhibit 15.

(The letter above-referred to was received in evidence and marked Petitioner's Exhibit No. 15.)

PETITIONER'S EXHIBIT No. 15
FIRST CALIFORNIA COMPANY

Investment Securities
MADison 6-5781
510 Spring Street
Los Angeles 13, California

December 3, 1947

Mr. Philip C. Jones,
417 South Hill Street, Rm 1075,
Los Angeles 13, California.

Dear Sir:

With reference to our letter addressed to you under date of November 26, 1947, referring to 40 units Southwestern Freight Lines in the name of Floyd K. Sullivan and Hattie B. Sullivan, common dated July 6, 1943, preferred stock dated June 1, 1943, and referred to as having been sent to transfer and new certificates issued, is in error.

The 40 units of Southwestern Freight Lines was received by us in the name of Frank K. Sullivan and Hattie B. Sullivan as joint tenants, and the original issuance date on these being, (common) July 6, 1943 and (preferred) June 1, 1943, were never transferred from that name to Floyd K. Sullivan prior to delivery to him because at that time these certificates were in the form of non-negotiable escro receipts and they were, therefore, re-delivered to Floyd K. Sullivan in the name of Frank K. Sullivan and Hattie B. Sullivan as joint tenants on March 15, 1944.

We also wish to point out on Page 2 of said letter, first paragraph, as to delivery date, this was incorrect and should have been March 15, 1944 and not March 15, 1947.

Yours very truly,

FIRST CALIFORNIA
COMPANY

/s/ E. J. LIND,
Ass't. Compt.

EJL:ls

The Court: Proceed.

Mr. Jones: I have some purely formal matters that, because of my personal knowledge, with respect to this estate, I should testify to, your Honor.

The Court: You should have suggested that before you started to try the case. We have no written rule on the subject. We certainly disapprove attorneys who try the case to testify.

Mr. Jones: I am conversant with the rulings where it involves a position of contest of that sort and with the recent decisions that have come down in the last week or so. These matters concern the actual transfer of the securities that were not transferred, but which were referred to in that agreement.

The Court: Is it a question of identification of instruments?

Mr. Jones: No, it is only the physical fact concerning the time when the transfers were effected. They were effected subsequent to the date of death

of Mr. Sullivan. If it is that you would prefer I not testify, we can eliminate it.

The Court: I am not going to say at once that you shall not testify. But, of course, there is an obvious reason why attorneys shouldn't testify in a case. They are interested parties and if a person is going to be a witness and knows that in advance, well, arrangements could be made for somebody else to try the case, as, of course, you must realize. You may go ahead and offer your evidence. I will see what the opposing counsel has to say about it. It may not be of such a nature he will object. I might sustain the objection if he did.

Mr. Jones: Do you want to interpose an objection?

Mr. Barnes: No. I believe I have none. I believe I know more or less the nature of this testimony and at the present time I will not interpose any objection.

The Court: Go ahead and we will see. Don't count in the future on getting in testimony by an attorney. You might not be able to do it. That is, an attorney that tries the case.

Whereupon,

PHILIP C. JONES

called as a witness for and on behalf of the Petitioner, having been first duly sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Philip C. Jones.

(Testimony of Philip C. Jones.)

Direct Examination

The Witness: This concerns the transfers of the Union Trusted Funds, Inc.—

The Court: Can't you proceed by question and answer? Isn't your co-counsel familiar with these matters so he can question you?

Mr. Mosher: If the Court please, I am sorry, I am not acquainted with this phase of it. [241]

The Witness: I probated this estate and no one else participated in it.

The Court: Proceed. The other method is preferable.

The Witness: These securities were not transferred in accordance with the agreement between Mr. and Mrs. Sullivan dated November 24, 1943. This fact was not discovered until subsequent to Mr. Sullivan's death. They were forwarded on April 1, 1945, to the First National Bank of New Jersey for transfer. That bank sent them on to the Guarantee Trust Company of New York.

The securities were transferred on May 25, 1945, in accordance with the agreement which is in evidence between Mr. and Mrs. Sullivan and the will of Frank K. Sullivan.

Mr. Barnes: May I interpose a question? This item is identified in the stipulation of facts as Item 5, Paragraph 4 (b)?

The Witness: That is correct. When the certificates were returned to me, one-half of them were in the name of Hattie B. Sullivan alone, and the other half were in the name of Hattie B. Sul-

(Testimony of Philip C. Jones.)

livan as a life tenant under the will of Frank K. Sullivan, with the remainder interest to Floyd K. Sullivan.

Item 8 of Paragraph 4 (b) of the stipulation, the Chicago City Railway First Mortgage Bonds, the same [242] situation concerns these that developed with the Union Trusteed Funds, Inc. They were forwarded on April 11, 1945, to the First National Bank of Chicago for re-registration. New certificates were issued and received on May 8, 1945.

These likewise were issued in accordance with the agreement between Mr. and Mrs. Sullivan on November 24, 1945, and the will of Frank K. Sullivan.

Mr. Barnes: I believe you mean the agreement of November 24, 1943, Mr. Jones.

The Witness: 1943, that is right, Mr. Barnes. In other words, one-half were issued in Mrs. Sullivan's name alone and one-half in her name as life tenant under the will of Frank K. Sullivan.

Items 6 and 7 of Paragraph 4 (b) are the Bonnie Lee Apartments Corporation and the St. Francis Hotel and Apartments Corporation. The testimony already has established that these corporations were in the process of liquidation prior to the dates we are concerned with in this proceeding. I, as the attorney for the estate of Frank K. Sullivan, eventually received the checks on final liquidation covering the cash which was available for distribution. One-half of that was returned in the

(Testimony of Philip C. Jones.)

estate of Frank K. Sullivan and one-half of that was handed over directly to Mrs. Sullivan, in accordance with the agreement of November 24, 1943.

The Court: Does that complete your statement?

The Witness: Yes.

Mr. Barnes: I have one question.

Cross Examination

By Mr. Barnes:

Q. The cash in Items 6 and 7, to which you refer, was issued in checks in whose name?

A. Hattie B. Sullivan, as to half of the liquidating amount, and Hattie B. Sullivan—no, I am in error. The other half was issued in the name of the Frank K. Sullivan Estate.

The Court: And half to Hattie B. Sullivan?

The Witness: That is right. There was an equal division, in accordance with the agreements between the husband and wife, of the cash.

By Mr. Barnes:

Q. Did you testify to the date at which you received those checks?

A. No, I didn't. All that I have in my memorandum on it was that the distribution was made subsequent to his death, and I don't have information as to the exact date. I have one letter——

Mr. Barnes: That is all I think is necessary, so far as I am concerned, Mr. Jones.

The Witness: I neglected, Mr. Barnes, to state, and to your Honor, that the \$50,000.00 in Series G Government [244] Bonds, which are referred to in

(Testimony of Philip C. Jones.)

the agreement between Mr. and Mrs. Sullivan of November 24, 1943, subsequent to his death, were redeemed and one-half of the proceeds returned in his estate and one-half of the proceeds turned over to Mrs. Sullivan.

Mr. Barnes: That is all.

(Witness excused.)

Mr. Barnes: If the Court please, at this point I might request permission to substitute a photostatic copy of the estate tax return in evidence. That is a duplicate original, and I would like to—

The Court: Permission is so given.

Anything further for the Petitioner?

Mr. Jones: We rest, your Honor.

The Court: What says the Respondent?

Mr. Barnes: Respondent rests, your Honor.

The Court: Until January 15, 1948, both sides to brief. Until February 10th for both sides to file reply briefs, if you wish.

(Whereupon, at 2:30 o'clock p.m., Wednesday, December 3, 1947, the hearing in the above-entitled matter was closed.)

[Endorsed]: Filed Dec. 30, 1947. [245]

In the United States Circuit Court of Appeals
for the Ninth Circuit

Tax Court Docket No. 12476

ESTATE of FRANK K. SULLIVAN, Deceased,
by FLOYD K. SULLIVAN, Executor,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DESIGNATION OF CONTENTS OF RECORD
ON REVIEW

To the clerk of the Tax Court of the United States:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit typewritten copies, duly certified as correct, of the following documents and records in the above-entitled cause in connection with the petition for review heretofore filed by the petitioner:

1. The docket entries of all proceedings before the Tax Court.
2. Pleadings before the Tax Court as follows:
 - (a) Petition
 - (b) Answer. [303]
3. The written stipulation of facts entered into between petitioner and respondent and all exhibits attached thereto.
4. The findings of fact and opinion of the Tax Court.

5. The decision of the Tax Court.
6. The petition for review.
7. The notice of filing petition for review.
8. The official transcript of oral testimony.
9. This designation of contents of record on review.

Dated July 22, 1948.

/s/ PHILIP C. JONES,

/s/ ALBERT MOSHER,

Attorneys for Petitioner.

(Acknowledgment of Service attached.)

[Endorsed]: Filed Aug. 2, 1948.

[Title of Tax Court and Cause.]

CERTIFICATE

I, Victor S. Mersch, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 304, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeclipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 17th day of August, 1948.

(Seal) /s/ VICTOR S. MERSCH,
Clerk, The Tax Court of the
United States.

[Endorsed]: No. 12027. United States Court of Appeals for the Ninth Circuit. Estate of Frank K. Sullivan, deceased, by Floyd K. Sullivan, Executor, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed August 23, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12027

ESTATE OF FRANK K. SULLIVAN, Deceased,
By FLOYD K. SULLIVAN, Executor,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITIONER'S STATEMENT OF POINTS TO
BE RELIED UPON ON REVIEW

To the respondent above named and to Theron L. Caudle, Assistant Attorney General, and Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, his attorneys, and to the Honorable Paul P. O'Brien, Clerk of the above entitled Court:

In compliance with the provisions of Subsection (6) of Rule 19 of the Rules of the United States Circuit Court of Appeals for the Ninth Circuit, you, and each of you, are hereby notified that the petitioner in the above entitled cause intends to rely upon the following points on his appeal in said cause:

1. There is no substantial or legally sufficient evidence to support the Tax Court's findings of fact that the transfer made on November 19, 1943, was made in contemplation of death.
2. There is no substantial or legally sufficient evidence to support the Tax Court's findings of fact that the transfer made on November 24, 1943, was not a bona fide sale for an adequate and full consideration in money or money's worth.
3. The above-designated findings of fact are contrary to the evidence.
4. The Tax Court's findings of fact do not support the decision made and entered by said Court.
5. The decision of the Tax Court is not in accordance with law.
6. The Tax Court erred and abused its discretion in failing to find as a fact that neither the whole nor any part of the properties transferred to Floyd K. Sullivan, the son of the decedent and his wife, Hattie B. Sullivan, were transferred by the decedent in contemplation of his death.
7. The Tax Court erred in holding that the transfers made by decedent to his son were transfers made by the decedent in contemplation of his death.

8. The Tax Court erred in holding that the transfers made by the wife of the decedent, to her son, were includable in the gross estate of the decedent as transfers made by the decedent in contemplation of his death.

9. The Tax Court erred in holding that more than one-half of the value of the securities once owned and held by the decedent and his wife as joint tenants and transferred by the decedent and his wife to their son during the decedent's lifetime, was includable in the decedent's gross estate.

10. The Tax Court erred in holding that the value of the undivided one-half interest of Hattie B. Sullivan, wife of the decedent, in and to the properties owned and held by the decedent and his said wife as tenants in common at the time of his death was includable in the gross estate of the decedent.

11. The Tax Court erred in holding that the joint tenancy properties once owned and held by the decedent and his wife and converted into tenancies in common during the decedent's lifetime, or any part of such properties, were transferred by the decedent.

12. The Tax Court erred in holding that the transfers, if any, involved in the conversion of the joint tenancy properties once owned and held by the decedent and his wife into tenancies in common were transfers in contemplation of the decedent's death.

13. The Tax Court erred in holding that the transfers, if any, made by the decedent and in-

volved in the conversion of the joint tenancy properties once owned and held by the decedent and his wife into tenancies in common were not made as a bona fide sale for an adequate and full consideration in money's worth.

14. The Tax Court erred in holding that the value of the undivided one-half interest of the decedent's wife in and to the properties owned and held by the decedent and his said wife at the time of his death as tenants in common was includible in the decedent's gross estate under and by virtue of the provisions of Section 811(e)(1) of the Internal Revenue Code.

15. The Tax Court erred in failing to hold that the conversion of the joint tenancy properties once owned and held by the decedent and his wife into tenancies in common during the decedent's lifetime was not a transfer made by the decedent in contemplation of his death or otherwise.

16. The Tax Court erred in failing to hold that the transfers, if any, made by the decedent and involved in the conversion of the joint tenancy properties once owned and held by the decedent and his wife into tenancies in common were made as a bona fide sale for an adequate and full consideration in money's worth.

17. The Tax Court erred in holding that the value of the properties, exclusive of the United States Savings Bonds, in which the decedent owned and held an interest at the time of his death, was includible in the decedent's gross estate for reasons and upon grounds which were not set forth in the Notice of Deficiency.

18. The Tax Court erred in failing to give recognition to the laws of the State of California in determining the effect of the transactions whereby the joint tenancy properties once owned and held by the decedent and his wife were converted into tenancies in common, and in determining the nature and extent of the property interests of the decedent in said properties at the time of his death.

19. The Tax Court erred in failing to find as a fact and to hold that the respondent was and is estopped and precluded by the provisions of and omissions from his Notice of Deficiency, from assessing a deficiency based upon his inclusion in the decedent's gross estate, under Section 811(e) of the Internal Revenue Code, of the value of the properties, exclusive of United States Savings Bonds, in which the decedent owned and held an interest at the time of his death.

20. The petitioner fully sustained and satisfied any and all of the requirements of law and rules of court relating to the burden of proof resting upon him in the Tax Court.

Dated at Los Angeles, California, August 27, 1948.

PHILIP C. JONES,
ALBERT MOSHER,

By /s/ ALBERT MOSHER,
Attorneys for Petitioner.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed August 28, 1948. Paul P.
O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

PETITIONER'S DESIGNATION OF CONTENTS OF RECORD NECESSARY FOR CONSIDERATION ON REVIEW AND FOR PRINTING

The petitioner deems the following portions of the record necessary for consideration of the questions presented on review and designates the same for printing in accordance with the provisions of Rule 19 (6) of Rules, Circuit Court of Appeals, Ninth Circuit.

1. Page 1—Docket entries.
2. Pages 2 to 30—Petition.
3. Pages 30 to 33—Answer.
4. Pages 33 to 109—Stipulation of Facts and Exhibits 1-A through 10-J inclusive. Omit Exhibit 11-K (Death Certificate of Frank K. Sullivan).
5. Pages 109 to 130—Findings of Fact and Opinion, including title of court and cause.
6. Page 130—Decision, including title of court and cause.
7. Pages 131 to 140—Petition for Review and proof of service.
8. Pages 140 to 246—Transcript of Testimony. (Omit therefrom the opening statements on behalf of petitioner and respondent commencing on page 142 and ending on page 146.)

9. Omit joint Exhibit 12-L—Pages 246 to 295.
10. Omit all of Exhibit 13—Pages 295 to 302.
11. Pages 303 to 305—Petitioner's Designation of Contents of Record on Review and proof of service (Tax Court).
12. Petitioner's Designation of Record for Printing (Circuit Court).
13. Petitioner's Statement of Points to be Relied upon on Review.
14. Certificate and seal of Clerk of Tax Court.

Dated at Los Angeles, California, this 27th day of August, 1948.

PHILIP C. JONES,
ALBERT MOSHER,

By /s/ ALBERT MOSHER,
Attorneys for Petitioner.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed August 28, 1948. Paul P.
O'Brien, Clerk.

